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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1962

No. 229

FEDERICO MARIN GUTIERREZ, PETITIONER,

vs.

WATERMAN STEAMSHIP CORP.

**ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT**

PETITION FOR CERTIORARI FILED JULY 5, 1962

CERTIORARI GRANTED OCTOBER 8, 1962

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UNITED STATES DISTRICT COURT

Adm.-19-59

FEDERICO MARIN GUTIERREZ

Libellant

v.

STEAMSHIP "SS HASTINGS", her engines,
boilers, etc. and

WATERMAN STEAMSHIP CORP.

Respondents

CIVIL DOCKET

1959

- Apr. 3 Transcript of record from U.S. District Court for the Southern District of New York, received and filed.
- 27 Appearance of S. L. Feldstein and H. B. Nachman as proctors for libellant, filed.
- Sept. 8 Deposition of Federico Marin Gutierrez for resp., filed.
- 8 Notice of filing of deposition, filed.
- 21 Trial is set for March 16, 1960 at 9:30 A.M.
- Oct. 5 Notice of deft. for taking of deposition, filed.
- Nov. 23 Interrogatories to libellant, filed.
- Dec. 3 Objections of libellant to interrogatories, filed.
- 11 Stip. for withdrawal by plff. of its objections to interrogatories 5 and 19 etc., filed. 12/11/59—
Approved.
- 11 A stip. having been filed no action is taken on libellant's objections to interrogatories.
- 14 Stip. for withdrawal by libellant of objections to interrogatories 35, 36 and 37 etc., filed. 12/14/59
—So ordered.
- 15 Answers to interrogatories filed by libellant.

1960

- Feb. 18 Notice of mot. of resp. for leave to file exceptive allegations and affidavit in support thereof, filed, with exh. attached.
- 26 Order entered granting leave to resp. to file exceptive allegations.
- 26 Memorandum of law in support of respondent's mot. for leave to file exceptive allegations, filed.
- 26 Exceptive allegations filed with exhibit 1 attached.
- Mar. 7 Order entered continuing hearing on respondent's exceptive allegations until 3/11/60 and resetting trial for March 21, 1960 at 9:30 A.M.
- 9 Stip. waiving posting of bond, filed.
- 9 Answer of Waterman SS Corp., filed.
- 11 After hearing argument of counsel, respondent's exceptive allegations taken under submission. Mr. Nachman granted until Monday to submit memo, and Mr. Rout allowed 3 days thereafter to file reply.
- 11 Memo. of resp. in support of exceptive allegations, filed.
- 18 Memo. of law in opposition to respondents' exceptive allegations, filed.
- 21 Trial had and cont'd. to 3/22/60 at 10:00 A.M.
- 21 Exhibit 1 for libellant, filed. Exhibits 1, 2, 3, 4, 6, 8 for resp., filed.
- 22 Further trial resumed and cont'd. until 3/23/60 at 10:30 A.M.
- 23 Trial resumed—further testimony heard—respondents moved for dismissal—mot. denied. Ct. granted ea. party 15 days after they are furnished with copy of transcript of expert medical testimony to file briefs.
- 23 Exhibit 2 for libellant, filed.
- 23 Exhibits 9, 10, 11, 12, 15, 16, 17 for resp., filed.

1960

- Apr. 28 Transcript of court reporter re: excerpt of testimony taken Mar. 21 and 22, 1960, filed.
- May 11 Libellant's memo. after trial, filed.
- 13 Mot. of resp. for ext. of 15 days after date of receipt of transcript of testimony of Dr. J. Iguina, and or translations of certain exhibits etc., to file memo., filed. 5/16/60—So ordered.
- 16 Transcript of court reporter re: testimony of Dr. Iguina taken during trial on 3/22/60, filed.
- June 10 Stipulation and order to withdraw certain exhibits filed. 1 s/copy issued to: Golenbock, Nachman and Feldstein; Hartzell, Fernandez & Novas, Esqs.
- Oct. 18 Respondent's trial memo. filed.
- 20 Libellant's reply memo., filed.
- Dec. 29 Memorandum opinion directing counsel for libellant to submit within 15 days proposed findings of fact, conclusions of law and form of decree, serving copy thereof to counsel for respondent, who shall thereafter have a like period to submit objections and amendments thereto, filed. 1 s/-copy issued to each of the parties.

1961

- Jan. 13 Libellant's proposed findings of fact, etc. tendered. (Approved as to form by resp.)
- Feb. 13 Objections and amendments of resp. to proposed findings of facts, etc., filed.
- Feb. 17 Mot. of libellant to adopt findings of fact and conclusions of law as proposed by libellant and to enter decree, filed.
- May 4 Findings of fact & conclusions of law and decree in favor of libellant against respondent for \$18,250.00 with interest, etc., filed. 5/4/61—Decree entered. 1 s/copy issued to each of the parties.

1961

- 22 Libellant's Bill of Costs, filed.
- 26 Costs taxed by Clerk in the amount of \$142.79.
- June 7 Notice of respondents of appeal, filed.
- 7 Bond for costs on appeal, filed.
- 22 Transcripts of court reporter re: trial, filed.
(First, second and third day)
- July 12 Mot. of appellatant for 30 days ext. of time to file record on appeal, filed. 7/12/61—Granted.
- Aug. 3 Mot. of resp. for order directing the State Insurance Fund to return their file No. 5V 7591 to this Court, filed.
- 4 Order granting mot. of resp. of Aug. 3, 1961, filed.
2 s/copies issued to Hartzell, Fernandez & Novas,
1 s/copy issued to Nachman & Feldstein.
- 10 Mot. of appellant for ext. of time up to Sept. 5, 1961 to file record on appeal, filed. 8/11/61—Granted.
- 31 Record on Appeal mailed to U.S. Court of Appeals in Boston.

LIBEL

TO THE HONORABLE JUDGES OF SAID COURT:

The libel and complaint of FEDERICO MARIN GUTIERREZ, against the "SS HASTINGS", her engines, boilers, apparel, tackle, furniture, etc. and against WATERMAN STEAMSHIP CORP., owner, operator, agent and/or charterer of the "SS HASTINGS", in an action of tort, civil and maritime, alleges on information and belief as follows:

AS AND FOR A FIRST CLAIM FOR RELIEF:

First: That at all the times hereinafter mentioned, the libellant, FEDERICO MARIN GUTIERREZ, was and now is a citizen of the Commonwealth of Puerto Rico, residing in the Commonwealth of Puerto Rico.

Second: The "SS HASTING" is now, or during the pendency of process herein, will be within the jurisdiction of this Honorable Court.

Third: That at all the times hereinafter mentioned, the respondent WATERMAN STEAMSHIP CORP., was and still is a corporation duly organized and existing under and by virtue of the laws of the State of Alabama, with an office for the transaction of business in the State of New York.

Fourth: Upon information and belief that at all the times hereinafter mentioned, the respondent WATERMAN STEAMSHIP CORP. owned, operated, managed, controlled, supplied, provisioned, manned and was in possession of the vessel, "SS HASTINGS".

Fifth: That on or about the 21st day of October, 1956, the said vessel, "SS HASTINGS" was in port at Ponce, Puerto Rico. —

Sixth: That on or about said date, the respondents had contracted with an independent stevedore for the movement and handling of the cargo of said vessel.

Seventh: That on or about the 21st day of October, 1956, the libelant was an employee of said independent stevedore in the capacity of longshoreman and as such was working on the dock adjacent to the said vessel, "SS HASTINGS" and performing certain work in connection with the movement and handling of cargo of the said vessel.

Eighth: That on or about the 21st day of October, 1956, the libelant, while in performance of his duties as a longshoreman on the dock immediately adjacent to said vessel, working under and by authority of the master, owner, agent or charterer of said vessel and the respondents he was caused to sustain serious and severe personal injuries when he was precipitated to the ground on said dock by reason of the improper storage of cargo on said dock.

Ninth: That the said occurrence was caused without any contributing fault or neglect on the part of the libelant, but

solely by the defective, unsafe and improper storage of cargo on the dock immediately adjacent to said vessel, and by the fault and negligence of the master, officers and crew of the said vessel and by the fault and negligence of the respondents in the following, among other particulars, which will be pointed out on the trial of this motion: In that the said vessel, its master, owners, agents or charterers and the respondents, their agents, servants and/or employees failed to furnish the libelant with a safe place in which to work; failed to provide libelant with a safe and seaworthy vessel and to keep the same in a safe condition; failed to have aboard the vessel a safe, competent and adequate crew and officers; failed to warn the libelant of the dangers to arise and to be encountered in the performance of his work aboard the vessel; failed to warn the libelant of the dangerous, defective and unsafe condition of the vessel, her compartments, appliances and cargo; failed to promulgate and enforce proper and safe rules for the proper performance of the work aboard the vessel; failed in a general way to maintain and operate the said vessel in such a manner as to avoid the occurrence of the aforesaid accident, all of which the master, owner or charterer of said vessel and the respondents knew or should have known.

Tenth: By reason of the premises, the libelant sustained serious and severe injuries to his head, arms, legs, body and nervous system, some of which, upon information and belief, will be permanent; that he was compelled to expend divers sums of money and incur liability to cure himself of said injuries and to alleviate the pain and suffering; upon information and belief, he will be compelled to make such further expenditures in the future; that the libelant has lost and will lose in the future sums of money which he otherwise would have earned.

Eleventh: That lashes do not apply in the instant case for the following reasons:

1. That the respondent WATERMAN STEAMSHIP CORP. has not registered with the Secretary of State of the Commonwealth of Puerto Rico and has not designated an agent for the service of process in the Commonwealth of Puerto Rico and is, therefore, not amenable to service of process.

2. That by virtue of the fact that the respondents are not amenable to service within the Commonwealth of Puerto Rico, the analogous statute has been tolled.

3. Libelant claims that there is no laches by virtue of the analogous statute of the forum which should be applied.

4. That the respondent has not been prejudiced because it has had due notice of the accident and of the claim made in the Fondo del Sagaro in Puerto Rico through its subsidiary corporation and upon information and belief, the respondent has in its possession an accident report and complete availability for making an investigation of the accident and the claim for relief.

5. That in any event, the respondent is at the present time as well able to defend this law suit as it was had the action been commenced at some earlier period of time and that, therefore, it is in no way prejudiced.

Twelfth: All and singular, the premises are true and within the admiralty and maritime jurisdiction of the United States and of this Honorable Court.

Thirteenth: And solely by reason of the aforesaid, libelant has been damaged in the sum of ONE HUNDRED THOUSAND (100,000.00) DOLLARS.

AS AND FOR A SECOND
CLAIM FOR RELIEF:

Fourteenth: Libelant reposes, reiterates and realleges each and every allegation contained in paragraphs "First"

through "SEVENTH" of this Libel with the same force and effect as if set forth at length herein.

Fifteenth: That it was the duty of the respondents to provide the libelant with a seaworthy and safe vessel, appliances and crew and to keep same in a seaworthy condition.

Sixteenth: The aforesaid injuries sustained by the libelant were directly cause by the failure of the respondents, their agents, servants and/or employees to provide a seaworthy, safe vessel, appliances and crew and to keep same in a seaworthy condition.

Seventeenth: That by reason of the failure of the respondents, their agents, servants and/or employees to provide a seaworthy and safe vessel, appliances and crew, libelant has been damaged in the sum of ONE HUNDRED THOUSAND (\$100,000.00) DOLLARS.

WHEREFORE, libelant prays:

1. That process *in rem* may issue in due form of law, according to the practice of this Honorable Court in causes of admiralty and maritime jurisdiction, against the said vessel, "SS HASTINGS", bat engines, boilers; apparel, tackle, furniture, etc., and that all persons having or claiming any interest therein may be cited to appear and answer all and singular the matters aforesaid:

2. That process *in personam* may issue in due form of law, according to the practice of this Honorable Court in cases of admiralty and maritime jurisdiction, against the respondent WATERMAN STEAMSHIP CORP., owner, operator and/or charterer of the vessel, "SS HASTINGS", and that said company may be cited to appear and answer all and singular the matters aforesaid; and in the event that the respondents cannot be found in this District or within this jurisdiction, then all goods, chattels and effects belonging to it within this district or within this jurisdiction, and in particular the vessel, "SS HASTINGS" and her engines,

boilers, apparel, tackle, furniture, etc, be attached in the amount of ONE HUNDRED THOUSAND (\$100,000.00) DOLLARS, the sum sued for in this libel, with interest, costs and disbursements of the libelant;

3. That this Honorable Court may be pleased to decree to the libelant his damages with interest and costs, and that the said vessel, "SS HASTINGS", her engines, boilers, apparel, tackle, furniture, etc., may be condemned and sold to pay the same, and that the libelant may recover his damages from said respondents; and

4. That the libelant may have such other and further relief as in law and justice he may be entitled to receive.

JEROME GOLENBACK .

Proctor for Libelant

225 Broadway

New York, N.Y.

ANSWER

To the Honorable Clemente Ruiz Nazario
Judge of the aforesaid Court:

The answer of Waterman Steamship Corp. to the libel of Federico Marin Gutierrez, alleges on information and belief as follows:

AS TO THE FIRST CLAIM FOR RELIEF

1. It admits all the matters alleged in Article FIRST of the libel.

2. As to the matters alleged in Article SECOND of the libel, it denies that the "SS HASTINGS" is now within the jurisdiction of this Honorable Court. It denies knowledge and information sufficient to form a belief as to all the other matters alleged in Article SECOND of the libel.

3. It admits all the matters alleged in Article THIRD of the libel.

4. As to the matters alleged in Article FOURTH of the libel, it admits that at the times mentioned therein, it owned the "SS HASTINGS", and that it operated, managed, controlled, supplied, provisioned, manned and was in possession of those portions of the "SS HASTINGS" which were not operated, managed, controlled, supplied, provisioned, manned and in possession of the independent stevedores referred to in Article SIXTH of the libel, its agents, servants and employees. It denies all the other matters alleged in Article FOURTH of the libel.

5. It admits all the matters alleged in Article FIFTH of the libel.

6. It admits all the matters alleged in Article SIXTH of the libel.

7. As to the matters alleged in Article SEVENTH of the libel it admits that on or about the 21st day of October, 1956 one Federico Marin Gutierrez was an employee of said independent stevedore in the capacity of longshoreman, and as such was working on the dock adjacent to said vessel, "SS HASTINGS", and performing certain work in connection with the movement and handling of cargo of the said vessel.

8. It denies all the matters alleged in Article EIGHTH of the libel.

9. It denies all the matters alleged in Article NINTH of the libel.

10. It denies all the matters alleged in Article TENTH of the libel.

11. It denies all the matters alleged in Article ELEVENTH of the libel.

12. It admits the admiralty and maritime jurisdiction of the United States and of this Honorable Court. It denies all the other matters alleged in Article TWELFTH of the libel.

13. It denies all the matters alleged in Article THIRTEENTH of the libel.

AS TO THE SECOND CLAIM FOR RELIEF

14. It repeats, reiterates and realleges each and every answer and denial contained in its answer to Articles FIRST through SEVENTH of the libel with the same force and effect as if set forth at length herein.

15. It denies all the matters alleged in Article FIFTEENTH of the libel.

16. It denies all the matters alleged in Article SIXTEENTH of the libel.

17. It denies all the matters alleged in Article SEVENTEENTH of the libel.

AFFIRMATIVE DEFENSES

Further answering and as separate defenses respondent alleges as follows:

18. If the libelant sustained any injuries and/or illnesses as alleged in the libel, said injuries and/or illnesses were caused in whole or in part by libelant's own negligence without any fault or negligence on the part of the respondent, its officers and crew of the "SS HASTINGS", nor as a result of the unseaworthiness of the "SS HASTINGS", her engines, tackle, apparel and/or appliances.

19. The occurrence alleged in the libel was the result of an unavoidable accident.

20. Libelant's alleged cause of action is barred by the provisions of Section 1868 of the Civil Code of Puerto Rico, 1930 Edition (31 LPRA 5298).

21. Libelant's alleged cause of action is barred by the provisions of Article 31 of Act No. 45, approved by the Legislature of Puerto Rico on April 18, 1935 as amended by Act No. 70 approved by the Legislature of Puerto Rico on June 15, 1955 (11 LPRA 32).

22. Libelant's alleged cause of action is barred by laches and respondent has been prejudiced by libelant's delay in filing his libel.

23. The libel fails to state a cause of action against respondent.

WHEREFORE, respondent prays that the libel herein be dismissed with costs.

HARTZEIL, FERNANDEZ & NOVAS
 By: (s) ANTONIO M. BIRD
Proctors for Respondent
 Room 908 Banco Popular Bldg.
 P. O. Box 392, San Juan, P. R.

MEMORANDUM

Upon the conclusion of the trial of this suit, the court stated from the bench that it was convinced, from the evidence adduced, that respondent's liability, both as regards unseaworthiness and negligence, had been proven and that libelant had overcome respondent's exceptive allegation in all its three grounds.

Accordingly the case was submitted exclusively for the purpose of determining the loss of earnings and other damages suffered by the libelant and recoverable from the respondent on account of the accident involved herein. In that respect, the court then directed that the expert medical testimony be transcribed and that once the transcript was delivered to the court and to counsel for the parties, the latter submit briefs in support of their respecting contentions as to earnings and damages.

The transcripts were in due course filed and libelant thereafter filed his memorandum on these two questions.

Respondent did not submit its memorandum until October 18, 1960.

Although the court had definitely directed counsel to limit their memoranda to the questions of loss of earnings and other damages, counsel for respondent saw fit to discuss and argue in its memorandum, not only the above issues

but also the issues of respondent's liability based on unseaworthiness and negligence, as well as the issue raised in respondent's exceptive allegations.

I have carefully considered the transcript of the expert medical testimony and counsel's memoranda and I am now fully advised in the premises.

-I-

As to the respondent's liability based on unseaworthiness and negligence respondent's memorandum of October 18, 1960 has failed to convince me that the ruling thereon given from the bench at the termination of the trial should in any way be disturbed or modified.

The fact that libellant suffered his injuries while working on the apron does not in any way preclude him from recovering on the basis of the unseaworthiness of the vessel.

See: *Marceau v. Great Lakes Transit Corporation*, (2 Cir.) 146 F.2d 416, 418.

Robillard v. A. L. Burbank & Co., Ltd. (D.C.S.D. N.Y.) 186 F. Supp. 193 (1960).

There is no doubt that under the evidence adduced herein the S.S. Hastings was unseaworthy at the time of the accident in question, that respondent failed to provide libellant with a safe place to work and also that respondent's negligence was the proximate cause of the accident and that therefore respondent is liable for the damages suffered by libellant.

-II-

As to the exceptive allegations there is nothing in respondent's memorandum which would justify changing my ruling at the termination of the trial.

The libel unquestionably states two good causes of action as to which the court, on the basis of the evidence adduced

at the trial, has ruled that respondent is liable to libellant on the grounds stated above.

As regards laches and the plea of limitations, the evidence shows that libellant in 1957, long before the one year period invoked by respondent had elapsed, consulted attorney Cole, and signed a contract retaining him as his attorney to bring the suit; that Cole left for New York and did not contact libellant for some time until late in 1958 when libellant contacted attorney Feldstein and asked him to straighten up the situation with Mr. Cole and take his case.

But even if the above were not to be considered as sufficient by itself to meet the defense of laches, still there are other factors that the court must consider in order to give due application to the said equitable doctrine.

As stated by the Supreme Court in *Gardner v. Panama R. R. Co.* 342 U.S. 29:

"Where no prejudice to the defendant has ensued from the mere passage of time, there should be no bar to relief".

The evidence adduced at the trial herein amply shows that the accident report, the names of witnesses, the records of the medical treatment received by libellant on account of the accident in question, payrolls and other records of the stevedoring contractor, including those relating to the unloading operations of the S.S. Hastings on the voyage on which the accident occurred, were duly preserved and kept since the date of the accident until the day of trial. All these records fully gave respondent all the data it needed for its defense. Indeed respondent itself offered most of those records in evidence.

It must, therefore, be concluded, as I hereby conclude that no prejudice to the respondent has ensued from the mere passage of time; that libellant's delay in bringing his action is no bar to his request for relief and that respondent's exceptive allegations, based on laches and limitation must be denied.

-III-

The damages.

As regards libellant's loss of earnings while he was being treated for the injuries caused to him by the accident in question, they amounted to \$250.00, i.e., five weeks he was out of work, at the rate of \$50.00 per week.

Now the task of ascertaining his other damages is not so simple.

This libellant had previously suffered an injury to his back in 1951, also working as a longshoreman and had been out of work for a period of 6 months on that account. Nevertheless he had been declared totally cured and discharged from further treatment by The State Insurance Fund. Thereafter he went back to work, first as a carpenter and later as a longshoreman.

The expert medical testimony of Dr. Rifkinson, witness for the libellant, as well as that of Dr. Ramirez de Arellano, witness for the respondent was to the effect that the libellant had recovered completely from said 1951 accident.

In 1956 he suffered the accident here in question.

Dr. Rifkinson testified that as a consequence of this 1956 accident, libellant sustained a herniated disc and that the 1951 accident played no role in said condition.

Dr. Ramirez de Arellano, medical expert testifying for the respondent was in complete agreement with Dr. Rifkinson as to the latter's diagnosis of herniation of the intervertebral disc at 14, 15, as the condition from which libellant is suffering at present.

Now, after the 1956 accident involved herein, libellant suffered a fall in 1958 which had no visible consequences in his then physical condition and in 1959 he suffered another accident which somewhat aggravated the symptoms occasioned by the 1956 accident.

The above two medical experts had not examined libellant

contemporaneously with the 1956 accident. They both examined him after the 1959 accident had taken place.

No other doctor, except Drs. Iguina, Bayonet and del Prado had examined him after the 1956 accident and before the 1959 occurrence.

Dr. Iguina's testimony is of no help. Although he indulged in generalizations as to libellant's physical condition after the 1956 accident, he did not have any records with him and was unable to base his assertions on any physical findings made either by him or by any other physician.

Dr. Bayonet's testimony was even less positive than Dr. Iguina's.

Dr. del Prado had merely made a routine medical examination in connection with a job application by libellant, in 1958. He claimed that he had made another physical examination of libellant in 1958 in connection with an occasion on which the libellant admitted he had not suffered any injury. This doctor brought no notes, or records, although he had been previously subpoenaed to testify as to the history he received from libellant in 1956. He further admitted that he never even took from libellant the history of any of his accidents. Neither does it appear from his testimony that he examined the libellant in connection with the injuries he suffered in 1956.

So the only expert medical testimony to which the court may and has given full consideration is that of Dr. Rifkinson and Dr. Ramirez de Arellano.

Both agree that the 1951 accident has no bearing on libellant's present physical condition. Both also agree that said physical condition is, primarily, the consequence of the 1956 accident here in question and that the 1959 accident did not cause that condition, but may have somewhat aggravated the same. They both also agree that libellant is permanently incapacitated unless he submits to surgery,

but neither of them can guarantee that surgery will be successful.

There is no evidence of the reasonable value of such surgery.

Beyond question libellant is presently suffering great physical pain and mental anguish. He is only 51 years old and has a normal working expectancy of not less than 14 years. Even if he undergoes surgery and this is successful, still he will remain with a permanent residual loss of motion and function.

In view of all the above considerations and having in mind libellant's loss of earnings, his pain, mental anguish, incapacity, necessity for surgery and absence of assurance that this be successful, the residual incapacity that would remain, even if surgery is successful, the period of four years during which he has endured the symptoms and the 14 years of working expectancy, and further considering whatever impact the 1959 accident may have had towards aggravating libellant's injuries resulting from the 1956 accident, the court believes that a fair and reasonable compensation for libellant's all other damages is the sum of \$18,000.00.

* Had it not been for the impact of the 1959 accident libellant would have been entitled to much more.

A decree in accordance with the above considerations shall be rendered in due course.

Counsel for libellant is directed to submit, within a period of 15 days from the date of notice of this memorandum proposed findings of fact, conclusions of law, and form of decree, serving copy thereof to counsel for respondent, who shall thereafter have a like period to submit objections and amendments thereto.

San Juan, Puerto Rico, December 29, 1960.

(s) CLEMENTE RUIZ NAZARIO

United States District Judge

FINDINGS OF FACT

1. The respondent, Waterman Steamship Corp., owned and operated the vessel "SS HASTINGS" on October 21, 1936.

2. On that date the vessel was berthed in the port of Ponce, Puerto Rico where she was discharging cargo.

3. Libellant, a longshoreman employed by an independent stevedoring contractor, was working on the apron of the pier alongside the vessel, assisting in the discharging operations from hold #2 forward.

4. The cargo being discharged was composed of food-stuffs mainly beans which were packed in bags.

5. Many of the bags were broken and defective. Coopers were working aboard the vessel and on the pier sewing sacks prior to and during the unloading operation.

6. Despite the work of the coopers, beans had been observed spilling from the drafts as they were unloaded from the vessel, throughout the operation. On one occasion, according to the records produced by respondent and admitted into evidence, a bag broke open in mid-air spilling its contents all over the dock. This event occurred while a draft from Hold No. 1, was in mid-air and still attached to the vessel. Hold No. 1 is immediately adjacent to No. 2 forward.

7. Beans scattered about the surface of the pier caused a dangerous condition for the longshoreman.

8. The cargo being discharged was defective and unseaworthy.

9. The shipowner was negligent in permitting the broken and weakened bags to be discharged, when it knew or should have known that injury was likely to result to persons in the service of the ship who had to work on and about the spilled beans.

10. The condition on the pier, was caused by the respondents' unseaworthy cargo and its lack of care. In permitting

this condition to remain existent, the respondent failed to furnish libellant with a safe place to work.

11. While working on the dock libellant slipped on the beans, twisting his torso and fell upon his buttocks.

12. The injuries received by libellant were proximately caused by this unseaworthiness of the vessel, the failure to furnish libellant with a safe place to work and by the negligence of the respondent.

13. The analogous statute of limitations for a like action brought in Commonwealth of Puerto Rican courts would have expired on November 30, 1957.

14. Action was commenced in the United States District Court for the Southern District of New York on or about January 9, 1959, or more than thirteen months after the expiration of the analogous statute of limitations.

15. In order to excuse laches libellant pleaded that the respondent was not prejudiced by the delay. The libellant did in fact contact counsel within the analogous period of limitation.

16. Payroll records of the stevedore indicated who were the potential eye-witnesses, all of which were produced by libellant. The payroll records themselves were produced by respondent. The accident report filed by the stevedore also named the witnesses and formed part of the file of the State Insurance Fund which was at all times subject to subpoena by the parties. The respondent itself produced records indicating the cargo damage prior to and at the time of discharge, medical records indicating the nature of treatment and the names of the treating physicians were also available, as were the physicians themselves. The respondent caused a deposition to be taken of libellant and submitted extensive interrogatories which were answered. Finally, the respondent availed itself of a physical examination of the libellant. From these facts, I conclude that no prejudice to the respondent has ensued from the delay of libellant in filing this action.

17. Although he sustained a prior back injury in 1951, libelant had completely recovered therefrom long before the injury sustained on November 21, 1954.

18. As a result of the injury while working alongside the "SS HASTINGS" libelant was hospitalized for a period of several days and under treatment for a period of five weeks during which time he was incapacitated for work and lost earnings of \$250.00.

19. The libelant returned to work thereafter and on July 31, 1959 suffered another injury or relapse and has since this latter date been totally incapacitated.

20. The libelant is now suffering from a herniated intervertebral disc at the level between the fourth and fifth lumbar vertebrae which causes him physical pain and mental anguish.

21. This condition is a result of the accident of October 21, 1956, aggravated by the accident of July 31, 1959.

22. Unless he submits to surgery the libelant will remain permanently incapacitated. There is no assurance that surgery will be successful or relieve the symptoms. Even if surgery is successful, the libelant will be left with a residual loss of function and motion of the back.

23. The libelant has a working expectancy of fourteen years. Although he has not returned to work since July 31, 1959, even if he should, his earning potential has been greatly diminished. For his loss of earnings, present and prospective, I conclude that reasonable compensation of \$8000.00 may be attributed to the condition directly related to the October 21, 1956 occurrence.

24. For his pain and suffering, permanent incapacity and mental anguish, past and future, I conclude that reasonable compensation for that portion of these damages attributable to the 1956 occurrence, is \$10,000.00.

25. No award is made for the reasonable value of medical expenses or for the cost of prospective surgery because

sufficient evidence has not been presented upon which such an award may be made.

26. The libellant was not guilty of any contributory negligence.

CONCLUSIONS OF LAW

1. The Court has jurisdiction over the parties and the subject matter. 46 U.S.C.A. 740.

2. The broken and defective condition of the cargo rendered the vessel unseaworthy. *Valerio v. American President Lines*, 112 F. Supp. 202.

3. The libellant is a member of the class of persons to whom the shipowner owes a duty of providing a seaworthy vessel. *Sea Shipping Co. v. Sieracki*, 328 U.S. 85, 66 S. Ct. 872, 90 L. Ed. 1099.

4. This duty extends to damages which occur or are consummated on land. *Strika v. Netherland Ministry of Traffic*, 185 F.2d 555.

5. The unseaworthy condition aboard the vessel was a proximate cause of libellant's injury ashore. *Revel v. American Export Lines*, 162 F. Supp. 279, *Robillard v. A.L. Burbank & Co., Ltd.*, 186 F. Supp. 193.

6. The respondent was also negligent in failing to furnish libellant with a safe place to work and in creating a dangerous condition ashore. *Marceau v. Great Lakes Transit Corp.*, 146 F.2d 416.

7. The respondent had notice, either actual or constructive of the condition it had created. Even, if it had no such notice, it would not be relieved of its duty to furnish a seaworthy vessel. *Mitchell v. Trawler Racer, Inc.*, 362 U.S. 539, 80 S. Ct. 926, 4 L. Ed. 2d 941.

8. The libellant was not contributorily negligent.

9. Laches does not exist, by virtue of the fact that respondent was not prejudiced by the delay. *Gardner v. Panama R.R. Co.*, 342 U.S. 29.

10. An award in the total sum of \$18,250.00 will reason-

ably compensate libellant for his loss of earnings, past and future, his pain, mental anguish, incapacity and necessity for surgery, allowing for whatever impact the 1959 accident may have had towards aggravating libellant's injuries.

DECREE

The above entitled action came on for trial before me on March 21-23, 1960 at San Juan, Puerto Rico and libellant and respondents appeared in person and by their proctors and testimony having been offered and briefs having been filed by both parties and the Court having filed its memorandum of December 29, 1960 and thereafter its findings of fact and conclusion of law, in accordance with Admiralty Rule 46 1/2 on May 3, 1961, now pursuant to said memorandum and said findings of fact and conclusions of law, it is hereby

ORDERED, ADJUDGED and DECREED that the libellant Federico Marin Gutierrez have judgment against respondent in the sum of \$18,250.00 with interest at the rate of 6% per annum from the date of the entering and signing of this decree until paid, and for his costs and disbursements in this action to be hereinafter taxed on notice.

San Juan, Puerto Rico, May 3, 1961.

(s) CLEMENTE RUIZ-NAZARIO

United States District Judge

Please take notice that WATERSMAN STEAMSHIP CORP., the respondent in the above entitled cause, hereby appeals to the United States Circuit Court of Appeals for the First Circuit from the final decree of this court entered herein the 3rd day of May, 1961, and from each and every part of said decree.

San Juan, Puerto Rico, June 1, 1961.

HARTZELL, FERNANDEZ & NOVAS

By: (s) ANTONIO M. BIED

Proctors for the Respondent

STENOGRAPHIC TRANSCRIPT OF TRIAL

[6] FEDERICO MARIN GUTIERREZ

the libellant in the action, was called as a witness on his own behalf and upon being examined testified as follows:

Direct Examination

[7] A. After those carts are filled they are taken away.

Q. How is the sling disconnected from the cable of the ship? A. That has a hook. The loop is taken off of the hook, and the draft then remains there.

Q. Who takes the loop off the hook? A. The two men working on the apron, that is, my partner and me.

Q. Do you remember the name of the ship you were discharging that day? A. I don't remember exactly.

Q. At what time did you start working on that day? A. At 7:00 in the morning.

Q. What hold were you assigned to? A. To the No. 2 forward hold.

Q. Who was your foreman, if you remember? A. We don't know the name of our foreman, because they select some foremen and send them inside the pier.

Q. Who was your companion that day? A. Carmelo Fraticelli.

Q. What sort of cargo were you unloading from the vessel? A. General cargo. We were unloading beans, corn, feed, rice, lard, all of that stuff.

[Q. At what hour did your accident happen? [8] A. From 3:00 to 3:30 in the afternoon.

Q. How did your accident occur? A. The accident occurred this way. As they were lowering the sling loads from the ship, there were broken bags and as they came out of the ship they would spill beans and some of everything they were bringing, on the platform.

Q. What happened? A. At 3:00 or 3:30 the draft was coming down and when I was about to receive it on the cart I slipped and fell seated on the platform.

Q. Was the sling still attached to the hook when you fell?
A. Yes, sir, it was.

Q. And how did you fall? A. I fell like this, and fell on this side over here.

(Pointing to the right side.)

Q. Were you able to get up by yourself? A. No, I couldn't.

Q. How did you get up? A. The fellow worker who was at hold No. 2 aft, since the two holds are close together, he came and helped me to get up.

Q. Do you remember his name? A. Yes, Manuel Quirindonga Cintron.

Q. What did you do after he lifted you up? A. Then they stood me up by the door of the pier and then I sat down to see if the pain would go away a little.

[9] Q. And then what happened? A. Then my partner finished the draft with the help of Cintron, and then Cintron helped to get me over to where the foreman was inside the pier to go over to the minor surgeon to fill out the report.

Q. And did you fill out the report that day? A. Yes, I did.

Q. And what did you do after you filled out the report?
A. Since it was late, I waited until the next day. I went home.

Q. What did you do the next day? A. I went to the Dr. Pila Clinic, in Ponce, the next day.

Q. What did they do for you in Dr. Pila's Clinic? A. They took a sample of urine and then they took some X-Rays, and they isolated me.

Q. When you say they "isolated" you, do you mean you were placed in bed? A. Yes.

Q. And how long did you stay in bed? A. I was in bed 11 days.

Q. What was done for you during those 11 days? A. They put hot water bags here and on my back. They gave me some tablets. That lasted for 11 days.

Q. And after the 11 days, what did you do, Mr. Marin?
[10] A. After 11 days, they discharged me from bed rest and gave me treatment.

Q. And how long did you remain under treatment? A. A month after the termination of the 11 days.

Q. And during these 11 days, and this month, did you have any pain? A. Yes.

Q. Where did you have that pain? A. From here down, all over my leg.

Q. Which leg? A. The right leg.

Q. After the month, were you authorized to go back to work? A. I went back to work.

Q. Did you feel at that time that you were able to work?
A. Well, I didn't feel in a condition to work.

Q. Did you appeal that decision of the Insurance Fund?
A. Yes, I did appeal.

Q. And I take it that the original decision was affirmed?
A. Yes, the other decision was affirmed.

Q. After you went back to work, Mr. Marin, did you continue to have any pain? A. Yes, I felt considerable pain in my legs.

Q. For how long did that continue? A. I still have pain. I have never lost the pain.

[11] Q. Now, Mr. Marin, when was the first time that you consulted an attorney about this case? A. Around 1957.

Q. And which attorney did you consult? A. Attorney Cole, who went over to our Union Hall to see what cases were over there.

Q. And after you consulted Mr. Cole, did you sign a re-

tainer with him to give him the case? A. A lot of time went by.

The Court: No, the question was, if you signed any paper to retain Mr. Cole?

A. Yes, I signed some papers to give him the case.

Q. And what was the next thing you heard from Mr. Cole? A. That he had left the country, and he hadn't gone back to the Playa Ponce for a long time. And then you men arrived in 1958.

Q. And who did you see in 1958, and where? A. I saw Mr. Feldstein at the Playa, at Ponce.

Q. And did you have a conversation with him at that time? A. Yes, and then he spoke to me about my case.

Q. And what did he tell you? A. Then he told me he would not care to take the case as I had already handed it to another attorney.

Q. And what did you do then? A. I told him then that I had given the case to another [12] attorney but he had left the country and I hadn't heard any more from him.

Q. And what did Mr. Feldstein tell you? A. Then he told me he would see if he could do it.

Q. What did he do, if you recall? A. About a month or a month and a half later, he went back to the Playa. Then he told me that Mr. Cole had handed him several cases of ours, that he had.

Q. And was your case included? A. And that among those several cases he had given him was my case.

Q. And when did this conversation with Mr. Feldstein take place? The first or the second, if you remember?

A. About the middle of 1958.

Q. Mr. Marin, did you ever have any trouble or injury to your back before 1956? A. Yes, in 1951 I suffered an injury in my back.

Q. And how long were you out of work as a result of that accident? A. About six months.

Q. And after six months, were you authorized to go back to work? A. Yes, and I worked.

Q. Where did you work? A. I worked aboard a ship of the Ponce Cement Corporation; a cement ship.

[13] Q. And when you went back to work after the 1951 accident, did you have any pains? A. I felt a slight pain in my back, but as time went by the pain began to fade away.

Q. After you went to work for Ponce Cement, where did you work thereafter? A. I worked at the Union Carbide Company, as a carpenter.

Q. And how long did you work as a carpenter? A. I worked considerably. I would work over there, finish my shift, and then come over to the pier to work.

Q. Was there a time that you were away from the piers entirely? A. No. Since they worked by the shift system, no, sir.

Q. Between the time you worked for Ponce Cement and the time you went to work at Union Carbide, did you work anywhere else? A. No, at the pier.

Q. And during all that time, did you have any pain? A. No. I worked at the Carbide, and in order to work at the Carbide I had to take a medical certificate. Then they sent me to Dr. Pila Clinic to get a certificate, and Dr. del Prado certified that I was in a completely good condition to work.

Q. And when was that? A. This was between 1953 and 1954. I don't remember the [14] exact date.

Q. And I show you, pointing in the court room, when you mentioned Dr. del Prado's name, is Dr. del Prado in the court room? A. Yes, he is the gentleman sitting back there.

Mr. Nachman: You are Dr. del Prado?

A spectator sitting in the court room: Yes.

Q. Up to the 1956 accident, Mr. Marin, did you have any

pain whatever in your legs? A. No, sir, I felt pretty well. I was working.

Q. You were also working after 1956 though, weren't you, Mr. Marin? A. Yes, I worked.

Q. And did you have any pain when you went back to work after the 1956 accident? A. I had to quit working as a carpenter because I couldn't stand it.

Q. How much did you earn as a carpenter? A. \$10.00 daily. \$1.25 an hour.

Q. And how much did you earn during the year as a carpenter? A. Working every day, at \$10.00, I charged \$50.00 a week.

Q. And was that every week during the year? A. Yes, except for the days when I had a shift at the pier which I had to go and work.

Q. Now, after your accident in 1956, did you have any [15] further injury to your back thereafter? A. Yes, after 1956, I had one in 1959.

Q. What happened in 1959? A. In 1959 while working for Alcoa about 4:00 in the morning we were receiving sling loads of milk.

Q. And what happened? A. When the sling load came down I went to receive it and then my right leg gave way under me, but then I grabbed the sling load and held on to it. I didn't fall to the floor.

Q. And after that did you receive treatment for that condition in the Fondo? A. Yes, sir.

Q. How long did you receive treatment? A. Well, I made that false step in July 1959, but I don't remember the exact date. I know that was in July. I think it was the 30th of July.

Q. Where did you have pain after the 1959 occurrence? A. I have always had pain in my legs. It's always remained with me, and also in my waist.

Q. Did the pain get worse after the 1959 accident?
A. Well, that aggravated it considerably.

Q. And have you been advised that you need any other kind of treatment? A. I have been advised to get an operation.

Q. Who gave you that advice? A. The Doctor of the Commission. I don't know his name. [16] There are two doctors now. The dark complexioned doctor. He said he was going to advise me and give me an order for an operation. Then the dark doctor told me that if I got an operation I would be worse than I was before.

The Court: What was the name of that doctor?

A. I don't know the name of that dark doctor. He is a fat man over at the Industrial Commission.

The Court: Garcia Estrada?

A. I think that's his name.

Q. What did this doctor tell you, exactly? A. A tall white man that was there asked me whether I wanted an order for an operation, that he would give it to me.

Q. What did the other one tell you? A. The other one told me I would be in the same condition because I would never get rid of the pain, whether I got an operation or not.

Q. Did you refuse the operation, or did they never order it? Which was it? A. They have the order, the letter for the operation. I know they sent the letter to my house.

Q. And have you refused to have the operation up to now? A. Yes, because I am willing to be operated on if I would be made whole again, but if it does not do any good, I don't want any operation.

Mr. Nachman: Your witness.

[17]

Cross Examination

By Mr. Rout:

XQ. Mr. Marin, after your injury did you speak to a representative of your employer? A. Yes.

XQ. Did you tell him what happened? A. I explained to him and then they gave me some blanks.

XQ. What did you tell him? A. I told him what had happened, that I received that sling load, that I had slipped and fell sitting on the platform.

XQ. Did you say anything else? A. I told him I had a severe pain and then he told me to report, and then he gave me the blanks.

XQ. Did you make a sworn statement to the State Insurance Fund, about your injury? A. Yes, sir.

XQ. What did you tell them happened? A. I told them that when I attempted to receive that draft I had slipped and fallen, sitting down.

XQ. Did you continue to work after you were injured? A. Yes, after I was definitely discharged as being able to work, I had to work.

XQ. I mean, the day of your injury, immediately after the injury, did you get up and continue to work? A. No, the boat was finishing work already.

[18] XQ. In that sworn statement, did you state to the State Insurance Fund at what time you were injured?

A. Yes, from 2:00 to 3:30.

XQ. I would like to have this marked as Identification 1 for respondent?

SWORN STATEMENT OF LIBELANT WAS MARKED IDENTIFICATION 1 FOR RESPONDENT.

XQ. I will show this Identification 1 to proctor for libellant.

Mr. Nachman: No objections.

XQ. Does this Identification 1 purport to bear a signature? A. Yes, mine.

XQ. And what is this document? A. This is a sworn statement.

XQ. I would like to offer Identification 1 in evidence as respondent's Exhibit 1.

Mr. Nachman: I have no objections.

The Court: It is admitted and ordered marked Exhibit 1 for respondent.

SWORN STATEMENT OF LIBELANT WAS ADMITTED IN EVIDENCE AND MARKED EXHIBIT 1 FOR RESPONDENT.

Mr. Rout: Let the record show I am indicating a question that was apparently asked.

The Court: Why don't you quote from the question for the record? Is it in Spanish?

Mr. Rout: Yes.

[19] The Court: You read the question in Spanish.

The Interpreter: When the accident occurred, what did they do with you?

Mr. Rout: And I would like to have the answer read. I would like to have the question and answer read to the witness and then I will ask questions.

The Interpreter: "When that accident occurred, what did they do with you?" Answer: "Well, I held on until 3 1/2 and went to the office to fill out the blanks and later the minor surgeon sent me over to Dr. Pila's Clinic." You answered that?

A. Yes.

XQ. You worked for 3 1/2 hours after you were injured that afternoon? A. No, I stayed there and my fellow workers helped me to work.

XQ. Do you recall that your deposition was taken on oral examination on August 21, 1959? A. Yes.

XQ. Do you remember being asked at what time you started to work? A. Yes.

XQ. Do you remember what your answer was? A. At 7:00 in the morning.

XQ. And do you remember being asked at what time the accident occurred? [20] A. From 3:00 to 3:30.

XQ. I would like to have the original deposition which is on file.

Mr. Nachman: Which page are you reading from?

Mr. Rout: From page 5 of the deposition.

The Court: Let the record show that the Deputy Clerk opens the envelope on which the deposition was transmitted to the Clerk, and withdraws the original deposition from the envelope.

Mr. Rout: I would like to show the witness page 5 of the deposition, and ask—

The Court: Have it marked for Identification. It will be Identification 2 for respondent.

Mr. Rout: The entire deposition, please? I would like to offer the deposition as Exhibit 2 for respondent.

Mr. Nachman: No objections

The Court: It is admitted and ordered marked Exhibit 2 for respondent.

DEPOSITION OF THE WITNESS WAS ADMITTED IN EVIDENCE,
AND MARKED EXHIBIT 2 FOR RESPONDENT.

XQ: I would like to read the first 2 questions and answers to the witness. "At what time did you start working?"

Answer: "At 7:00 in the morning." Question: "At what time did the accident occur?" Answer: "Between 11:00 and 11:30." Is that the true answer? [21] A. It was between 3:00 and 3:30.

XQ. Then, you didn't tell the truth at the deposition, is that right? A. If it was written down like that, then that's because they wanted to write it that way, but I said from 3:00 to 3:30.

XQ. Did you read this deposition before you signed it? A. I never read it. They just gave it to me to sign.

XQ. At page 8 of the deposition, you were asked the question, did you continue working after your injury?

The Court: I want to have the original deposition.

XQ: And your answer was, "The same day, you mean?"; and the question was "Yes", and your answer was "Yes, I worked until 4:00." Is that true? A. That was because

I did not go out of the place. I had to stay there to go to see the minor surgeon, and my fellow workers were there helping me until the ship finished. I could not continue working, receiving any drafts.

XQ: Did you tell the truth when you said you continued to work, after your injury that day? A. Well, because while I was there I was getting paid for it, and while you are getting paid you are working.

XQ. At that sworn statement, you were asked this question. "At what time was it that this accident happened?" and to that question you gave the following answer. "At 10:00 in the morning." [22] A. No, I said from 3:00 to 3:30 in the afternoon, because it was the next day that I went to the clinic in the morning, because it was already too late.

The Interpreter: The question and answer in the sworn statement are: "At what time did that accident occur?" "At 10:00 in the morning."

XQ. Do you remember the date that you made that statement, Mr. Marin? A. That's the State Fund statement?

XQ. Yes? A. I never gave that statement to the State Fund.

XQ. I would like to show the witness the date of that statement. What's the date of that statement? A. Is this November 29, 1956?

XQ. Did you make this statement to the Fondo? A. I didn't give that statement to the Fondo. Because I made it in October.

XQ. Did you sign this statement? A. Yes, I did sign this one. I was injured on 21 October 1956.

XQ. When you went to see the doctors at the Fondo, after your injury on October 21, 1956, did you tell them that you were suffering from pain? A. Yes, sir.

XQ. What did you tell them? A. I said that I suffered

severe pain in my right leg, [23] up to my waist. In this part here. All of this.

XQ. Is there anything else that you told them? A. No, my leg and all of this.

Mr. Rout: Let the record show he is indicating his right hip area, is that correct? I would like this marked as respondent's Identification 3. This is the report of the accident. And this will be respondent's Identification 4, which is the medical report.

THE ACCIDENT REPORT WAS MARKED IDENTIFICATION 3 FOR RESPONDENT.

A MEDICAL REPORT WAS MARKED IDENTIFICATION 4 FOR RESPONDENT.

Mr. Nachman: I object.

The Court: Any of the exhibits that are in the Spanish language are admitted conditionally. You will have to furnish translations.

Mr. Rout: I would like to offer in evidence as respondent's Exhibit 3, the accident report filed with the State Insurance Fund on October 21, 1956, in connection with the injury of libelant. It has been stipulated between—

Mr. Nachman: I object to the admission of the accident report unless I know first for what purpose it is being admitted. I don't believe that the report, signed by somebody that wasn't brought here, is anything more than a hearsay document by the employer. I don't know what purpose it is [24] being brought here for, but if he tells me for what purpose it is brought—

Mr. Rout: This was stipulated as being a part of the State Insurance Fund records.

Mr. Nachman: It is part of those records, certainly, but that does not mean it is all admissible.

The Court: What's the purpose of offering this? If it is to impeach the testimony of the witness as to the hour of the accident—

Mr. Rout: It is to impeach the witness as to the pain he complained of at the time of the accident, and the medical report as the conclusion of the Fondo after the medical examination.

Mr. Nachman: Who is it signed by?

Mr. Rout: One part by Dr. del Prado, and the other by Mr. Gil.

The Court: If this is the report, it must have been made by somebody on the part of the employer. The signature of the libelant isn't here. And the man who prepared this report must testify. It is hearsay. Indeed, it has some names which have been deleted and some other names put over them. I don't believe I can admit that as coming from the—

Mr. Rout: I understand that this is an official report required to be filed by the employer with the State Insurance [25] Fund, with respect to the injury of a workman.

The Court: Well, under the shop book rule, you would be entitled to offer it and it would be admissible. Now, to what extent is different. It is admissible to show that a report was submitted. The law was complied with, and the report was submitted.

Mr. Rout: I will submit the offer of respondent's Identification 3, and offer respondent's Identification 4.

Mr. Nachman: I have no objection.

The Court: Exhibit 3 is admitted under the shop book rule for the purposes already stated by the Court, and ordered marked Exhibit 3 for respondent. And Exhibit 4 is also admitted because no objection has been made.

THE ACCIDENT REPORT WAS ADMITTED IN EVIDENCE AND MARKED EXHIBIT 3 FOR RESPONDENT.

THE MEDICAL REPORT WAS ADMITTED IN EVIDENCE AND MARKED EXHIBIT 4 FOR RESPONDENT.

XQ. You stated, Mr. Marin, that you had a pain in your

right leg at the time of the injury? Is that correct? A. You mean at the time of the 1956 accident?

XQ. That's correct? A. Yes, since 1956.

XQ. Why didn't you tell the doctors that examined you after [26] the 1956 injury that you were suffering from pains in your leg? A. I told them that, yes. That the pain extended down to here. They ordered massage for my leg.

The Court: Of course, those exhibits have been admitted by the Court in the Spanish language, and the admission is conditioned upon your attaching to them a translation into the English language, and that must be done as early as possible. I don't want it to happen, that after an appeal is taken in the case, then the Official Interpreter of the Court has to act in a hurry at the request of one of the parties, in order to have the translation made.

Mr. Rout: All right, Your Honor. I would like to read to you the resume of the examination of the doctor from the State Insurance Fund who examined the witness after this injury.

Mr. Nachman: I object to the characterization. This is a report of an X-Ray examination. The history on the top, there is no evidence that it came from the doctor who took the X-Rays. It is just a resume of the hospital record, and admitted there in the history for what it's worth. But I object to the characterization that it is what you told the doctor. There is no proof of that whatsoever.

The Court: Let me see it. Dr. del Prado is in the court room. You may bring Dr. del Prado if you want to later. [27] As a resume, I don't believe that's admissible for the purposes you indicate. It is simply admissible as part of the hospital record.

Mr. Rout: I will withdraw the further questions as to Exhibit 4 for the present. Referring to your sworn statement of November 28, 1956, do you recall these questions and answers?

(By the Interpreter): "What did you come here today for? I was sent here for examination from over in Ponce. What happened to you? Just as I was about to receive the draft, it seems that the winchman inside hauled the draft up and carried me, and I was carried over and fell on the pavement, and when I fell I could not get up because I felt a strong pain in my waist and around the inguina."

XQ. Was that a true answer to that question? A. Because the sling load was swinging back and forth.

The Court: That isn't responsive to the question. He asked whether that was the truth.

A. That's what I said, when I fell. But what happened was that when I went to get the sling load, I slipped on the beans that were on the pavement. Sometimes the draft comes down from the ship swinging back and forth too much, and the two of us are unable to grab hold of it.

XQ. Will you translate the last question?

The Court: He answered that when the Court warned him. He said it is true. It happened this way and that. [28] Yes, he said it is true, he answered that.

XQ. Is it true that you never complained of the injury in your right leg at the time of your injury, did you, Mr. Marin?

The Court: That's another question.

A. Yes, I told the doctor about that. They also massaged me in the clinic they gave me massage. They also massaged my back. They applied a light to my back, on my back, and on my waist.

XQ. Did the abnormal swing of the draft have anything to do with your slipping? A. No. No, since it was necessary to put the draft on the cart, when I went to grab it, I slipped on the beans that were on the floor.

XQ. What did you mean by this statement on November 28th?

Mr. Nachman: I respectfully object. The question, Your

Honor, calls for a state of mind, as it existed in November of 1956. It is obvious that this man's testimony as to what he thought on November 28, 1956, is of no importance in this case.

The Court: They are asking him what he meant by what he said there.

Mr. Nachman: The question is what he meant in 1956 by what he said, and if they ask him what do you mean today, I have no objection.

The Court: Objection sustained. You may change the [29] question—what do you mean by this?

XQ. Mr. Marin, the question is, what do you mean by this answer, here? A. When the draft came down, since we have some carts there it is necessary to position the draft on them, and the draft comes down swinging from side to side, like this. When I tried to grab the sling load, I slipped and fell on the pavement. I didn't even touch the draft because as I reached out for it I slipped. I fell sitting on the pavement.

XQ. What caused you to slip? A. Because the floor was full of grains. There was rice, there was beans, there were peas.

XQ. Why didn't you tell that to the State Insurance Fund when they asked you how the accident happened?

Mr. Nachman: I object to the form of the question.

The Court: What's the materiality of that? His failure to tell that to the State Insurance Fund?

Mr. Rount: The materiality of the question is merely to challenge the man's credibility, because four years after the injury occurred he comes to the Court with a different story explaining how it happened.

The Court: Well, that's there; but if you ask him why he didn't tell that to the State Insurance Fund, that's not going to help the Court as to the credibility of the witness.

Mr. Rout: I don't know what his answer would be. Maybe [30] he would explain the inconsistency.

The Court: No. The fact is he told this to the State Insurance Fund on that date, and then he says he meant this, and now he testifies as to this. That's all I have to consider. I don't care what he intended to state to the State Insurance Fund. Objection sustained.

XQ. How long did you state you were hospitalized, after the injury? A. From the 21st of October until the 11th of November, 1956, until I was definitely discharged with orders that I could work.

XQ. Do you remember being asked at your deposition, "Were you hospitalized as a result of this injury?" Page 8? A. Yes. 11 days.

XQ. Do you remember answering, "I was in the hospital for 2 or 3 days? A. I was there 11 days.

XQ. You didn't tell the truth at the deposition? A. I didn't remember the exact number of days. I remember that between the time I was in the hospital and the time I was an out-patient, I was between the 21st of October and the 28th of November.

Mr. Rout: I would like to have this marked for identification.

The Clerk: Identification 5 for respondent.

[31] EVALUATION REPORT WAS MARKED IDENTIFICATION 5 FOR RESPONDENT.

Mr. Nachman: Are you offering this?

Mr. Rout: Yes.

Mr. Nachman: I respectfully object, Your Honor. This is an evaluation made by a doctor in Ponce for purposes of compensation under the State Insurance Fund, which is an independent method of computation, and for that purpose I object. If he wants to read any medical diagnosis which exists there and shows me which he wants to read, I

have no objection, but as for the determination of compensation, I respectfully object.

The Court: What's the purpose of this? This is simply a letter from Dr. Iguina which says that it does not agree with an evaluation of the doctors in San Juan. And he refers the case back to the doctors to determine what it is all about.

Mr. Rout: Your Honor, one of the important elements of contradiction is the libelant's claim that he stated that he suffered injury to his right leg at the time of this injury, and this is part of the corroborating document, an official record of the State Insurance Fund, which summarizes the interviews with the libelant.

The Court: As to that, I don't believe it is admissible. I believe it would be hearsay. He does not state that the libelant told him that he did not suffer any pain.

Mr. Rout: This is a part of the official medical record, [32] Your Honor, and I think whatever logical inference that could be drawn therefrom should be before the Court.

Mr. Nachman: This isn't part of the medical record. It isn't done for the purposes of treatment at all.

The Court: Objection sustained.

XQ. Do you recall in the written interrogatories being asked, Mr. Marin, the dates during which you were confined to a hospital? That's interrogatory number 3-A? A. I don't remember exactly.

XQ. And do you recall answering that question, "I was confined to the hospital from October 22 to October 25, 1956? A. I said from the 21st of October to the 11th of November when I was definitely discharged from everything, from going to the hospital and everything.

XQ. Please answer the question, Mr. Marin? A. Well, I don't know exactly how that statement is.

XQ. Did you also state in your answer to interrogatory 3-D that you were unable to work for five weeks? A. I

answered that I couldn't work until I was definitely discharged from the clinic.

XQ. Mr. Marin, you stated that after your 1956 injury, you suffered one more injury to your back. Is that the truth? A. In 1959.

XQ. That was the only one, is that correct? A. 1959.

XQ. And you would remember if you had suffered any other [33] injuries to your back after 1956, wouldn't you?

A. No. In 1956 I didn't receive any injury to my back. After 1956 I remember in my waist and my back I had not received any injury until 1959.

XQ. Do you recall working for the Brown-Root Company? A. Yes.

XQ. Did you suffer any injury while you worked at the Brown-Root Company? Answer the question, please, Mr. Marin? A. I received an injury but it was a slight injury, inasmuch as the next day I went back to work.

The Court: What was that company?

Mr. Rout: The Brown-Root Company.

A. I was working as a carpenter there.

XQ. So you didn't tell the truth, did you, Mr. Marin, when you said you suffered only one injury to your back?

A. Because I didn't get any back injury at all. I did not fall down in the accident I had with Root. The only thing that happened was that while I was lifting up a cart, this foot went into a hole. Then the continental sent me to the clinic to be checked. Since I didn't have anything wrong with me, I went back to work the next day.

The Court: Unless there is any special reason to continue with this examination, we will now take a recess for lunch until 2:00 P. M.

(The noon recess was then taken.)

[34] The trial of the above entitled action was resumed at 2:15 in the afternoon, pursuant to the taking of the lunch recess. All parties and their counsel were present as before.

Cross Examination-Continued:

By Mr. Ront:

XQ. Do you remember being examined by Dr. del Prado, Mr. Marin?—A. On what date?

XQ. I want to know whether you remember being examined by him at any time? A. Yes, he examined me, but I don't remember when.

XQ. You stated in direct testimony that in 1953 or 1954 he examined you, is that correct? A. Yes, but that was when the Carbide Company needed carpenters and they required a health certificate.

XQ. Was that the only time you were examined by Dr. del Prado? A. No, since then he has examined me on other occasions.

XQ. On how many occasions? A. I don't remember how many occasions.

XQ. Did he ever give you a certificate of good health, aside from that one time? A. No.

XQ. No, what? A. He didn't give me a certificate. That certificate was [35] for the Carbide Company, but not for me.

XQ. Did you, at any other time, Mr. Marin, require a certificate of good health in order to get employment, aside from the one you are speaking of? A. No, at our union because of the public health question they give examinations. They examine your back, etc., in order to work.

Mr. Ront: Please read the question back?

(The question was repeated by the Reporter.)

A. No.

XQ. All right, that's enough. In fact, that certificate to go to work was for Brown and Root, wasn't it? A. Yes, sir.

XQ. And that examination was in 1958, wasn't it? A. No, that was between 1953 and 1954, when I started to work.

The Court: And it was for Union Carbide?

A. Yes, sir.

XQ. Do you know what kind of work Brown and Root was doing, at the time you were employed by them? A. They were constructing some kind of pipe for a building. The building where they have some machinery now.

XQ. Do you know if they were constructing a plant for the Union Carbide Company? A. I don't know.

[36] XQ. Do you know there was no Union Carbide in 1953 or 1954, in Puerto Rico? A. I don't know, because we were making some excavations. First they would make a foundation of wood, and then pour concrete into it. That was in 1952 to 1954.

XQ. Will you answer the question, please?

The Court: He answered before, and then he explained.

A. I don't remember the exact date.

XQ. How long had you been working for Brown and Root, prior to the time you were injured in 1958?

Mr. Nachman: I object to the question. The question was out long he had been working for Brown and Root prior to the time he was injured. He said he stepped in a hole, but since there was no injury he went back to work the next day. He denied there was an injury in 1958, and was not out of work a day.

The Court: Objection sustained.

XQ. How long had you been working for Brown and Root prior to the time, on March 25, 1958, when you stated you stepped into some soft ground and had to go to the doctor, or were sent to the doctor? A. I don't remember exactly.

XQ. Approximately? A. I didn't work continually.

XQ. Approximately, when did you start to work? [37]

A. I don't know more or less, or exactly.

XQ. Two years? A. A little over a year, because I worked at both places. I worked at the pier and over there.

XQ. Was it after this 1956 injury that you went to work for Brown and Root? A. No, it was before.

XQ. Before your 1956 injury? A. Yes, before.

XQ. How long before? A. I have already said 1953 or 1954.

The Court: Wasn't that with Union Carbide?

A. No, I don't know. Some people called it Brown and Root, others Union Carbide. That was in the digging of an excavation to start out that job.

Mr. Rout: I would like to have this report marked for identification.

The Court: This is Identification 6 for respondent. No objection?

A REPORT FILED WITH THE STATE INSURANCE FUND WAS MARKED IDENTIFICATION 6 FOR RESPONDENT.

Mr. Nachman: He hasn't offered it yet.

Mr. Rout: I am now offering as respondent's Exhibit 6, the information report,—

Mr. Nachman: I object, Your Honor.

[38] XQ. filed with the State Insurance Fund in connection with an alleged accident of the libelant on March 25, 1958. It has already been stipulated that this is the official record of the State Insurance Fund.

Mr. Nachman: This is a record, as he admits, filled out by the employer. The State Insurance Fund isn't in the business of filling out forms for the employees, and neither is Brown and Root in the business of filling out reports. If he wants to say this man reported an accident to Brown and Root, it is his onus to bring somebody to state that he had reported an accident.

Mr. Rout: I am not trying to establish a case on this document. I am merely offering it because it is an authentic record in the offices of the State Insurance Fund, that it contains certain information certified to by the employer of the libelant in this case, and whether or not it is established beyond a reasonable doubt as to an issue involved in this case is another matter entirely.

Mr. Nachman: For the records made by the State Insurance Fund it certainly may be admissible, but certainly not for the records made by somebody else is it admissible.

The Court: I believe you are trying to limit the shop book rule. It isn't the records they make, but the documents they file in those records.

Mr. Nachman: This isn't necessary either for treatment [39] or any other purpose. It is a report filed with the State Insurance Fund.

The Court: This is to impeach the witness as to the fact that the accident happened in 1958, and not in 1954?

Mr. Rout: Yes, Your Honor.

The Court: Objection overruled.

Mr. Nachman: He admitted it happened in 1958.

The Court: He said it was 1953.

Mr. Nachman: No, he was asked when did he start working for Brown and Root, and he said Brown and Root and Carbide are the same, but he admitted before the luncheon recess that this happened in 1958, that this happened in 1958 that he was sent to the doctor by his superiors.

The Court: I am going to admit this to show that Brown and Root reported an accident for this libellant at such and such a date.

Mr. Nachman: I concede that.

Mr. Rout: This man testified that in order to go to Brown and Root he had to pass an examination, and that he was employed at that time by Brown and Root. This particular document has the question in it, how long has this employee been working for you, and his answer is 3 months, and it is to the credibility of the witness also.

Mr. Nachman: Again, he said his work was completely irregular. I don't understand how a document such as this [40] can impeach his credibility. I don't understand how this impeaches anything he said. He admitted that he worked for Brown and Root.

The Court: This is up to the Court. It is admitted and ordered marked Exhibit 6 for respondent, subject to having the translation incorporated into the record.

REPORT FILED WITH THE STATE INSURANCE FUND WAS ADMITTED IN EVIDENCE AND MARKED EXHIBIT 6 FOR RESPONDENT.

XQ. I am going to read to you question 12, and the answer to it, of this information report filed by your employer Brown and Root.

The Court: For the purposes of the record you had better translate this question into English for the record, and then read it in Spanish.

The interpreter (reading): 12. How long has he worked for you? Three months.

XQ. Was your employer telling the truth when he made that statement?

Mr. Nachman: Objection.

The Court: Objection sustained. It is a conclusion of the witness. You are asking for a conclusion that is for the Court to say. You may ask whether that was true or not.

XQ. Mr. Marin, was it true that you were working for 3 months for Brown and Root, on March 25, 1958? A. But that was before, and I worked a long time for Brown [41] and Root.

The Court: But the question is this. At the time of that accident, is it true or not that you had been working for Brown and Root only three months at that time?

A. I first worked for Brown and Root, and then I went back to work. I worked at the pier a while, and then I went back to work for Brown and Root.

XQ. What was the first date that you went to work at Brown and Root? A. Between 1953 and 1954, when they began making the foundation excavation.

XQ. What were your gross earnings in 1956, Mr. Marin? A. I don't know exactly, because as I worked at the pier.

The Court: Don't you think that that question, to this witness? Why don't you ask him how much he was making as a stevedore, and how much he was making as a carpenter all around, and how many weeks he worked? If you make a question like that, which would be a good question for a financier, but not for this man, you won't get the answer correctly.

Mr. Rout: That was brought out on direct examination, but subject to some query in my mind. I wanted to have the opportunity to cross examine him, not necessarily spoon-feed him the answer. I would like to ask the question again.

(The question was read back by the Reporter.)

A. I don't know, exactly.

[42] XQ. Approximately? A. Since we work a shift a week at the pier, in one shift we can make up to \$50. Sometimes we make \$25.

XQ. Approximately how much in dollars and cents, Mr. Marin? A. You mean, on one shift?

XQ. No, in 1956? A. I can't tell you exactly. I don't have any papers to support that.

XQ. Approximately how many weeks did you work as a carpenter in 1956? A. I didn't work at all in 1956.

XQ. As a carpenter? A. I had already finished working. They had suspended that work and I couldn't go back to work.

XQ. In 1957, how many weeks did you work as a carpenter? A. I couldn't work in 1957. I have my tool box up on the shelf. I can't take it down to work.

XQ. How about 1955? How many weeks did you work as a carpenter? A. I worked several weeks in 1955. I worked at the pier.

XQ. Were you awarded compensation for your 1951 injury?

Mr. Nachman: I object, Your Honor. I don't know what materiality it has.

The Court: What's the purpose of the question?

Mr. Rout: The purpose of the question, Your Honor, is to [43] distinguish between the injury allegedly suffered in 1956 and that in 1951, and the degree of disability fixed as a result of one injury as against another.

The Court: You are going to make the comparison as on the basis of what he says he got in 1951, and 1956? Objection sustained.

XQ. When Dr. del Prado gave the certificate to Brown and Root to enable you to go to work with them, were you feeling in good health? A. Well, he told me I could go to work.

XQ. How did you feel at that time? A. I felt pretty good.

XQ. When was the first time you attempted to commence a lawsuit against the respondents in this case? A. In 1957.

XQ. When, in 1957? A. Around the middle of 1957. I don't know the exact date.

XQ. At page 7 of your deposition, you were asked the question, "Why did you wait until January 1959 to bring suit against Waterman in this case?" And you answered, "Because I didn't know that I might have a right to claim for my injuries." Were you telling the truth when you said that? A. Well, that's what they asked me, that I gave the case to Mr. Cole when he arrived at the Playa with Freddie in 1957, [44] and I thought of that case as lost already.

[45] NATHAN RIFKINSON

a witness called by and on behalf of the libellant, after having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Nachman:

Q. What is your name? A. Nathan Rifkinson.

Q. What is your occupation? A. Physician.

Q. Do you have a specialty? A. Neuro-surgeon.

The Court: Do you concede the witness' qualifications as a neuro-surgeon?

Mr. Rout: Yes.

By Mr. Nachman:

Q. Dr Rifkinson, did you examine the witness Mr. Federico Marin Gutierrez?

A. Yes, I did.

Q. When did you examine him? A. Some time in February; I don't recall exactly.

Q. Of this year? A. Yes.

Q. At whose request? [46] A. At your request.

Q. Did you get a history from this patient, Doctor?

A. Yes, I did.

Q. Was this vital in any way to your diagnosis? A. No, not to the diagnosis. The diagnosis was fairly obvious.

Q. What sort of medical examination did you make, Doctor? A. A neurological examination.

Q. What would that consist of? A. The examination of the nervous system and the strength of the muscles, movements of the extremities and the sensory testing.

Q. What did you find? A. May I have the report I sent, please? I found that the patient had a loss of the lumbar curve.

Q. What is a loss of the lumbar curve? A. Well, normally the lumbar vertebrae are curved somewhat, anteriorly. And when there is a lot of muscle spasm it usually straightens the curve. It is an indication of some difficulty in the lumbar spinal area, and there was moderate lumbar muscle spasm more marked on the right.

Q. What does that indicate, Doctor? A. That there is an

attempt of nature to prevent excessive movement, to limit the motion of the lumbar spine; forward bending was accomplished fifty-five degrees.

[47] Q. What's the normal, Doctor? A. Well, usually around ninety degrees.

Q. So that? A. There was a definite limitation of the forward bending. He could not bend completely normally. Then the right straight leg raising test was fifty-five degrees from the horizontal.

Q. Did you also make the same test on the left? A. Yes.

Q. What was it on the left? A. The left was sixty-five degrees.

Q. What is this an indication of, if anything? A. When there is a limitation of the straight leg raising it usually indicates muscle spasm, which is usually secondary to pressure against a nerve and excessive elevation would stretch the nerve against this particular pressure and produce pain, so that the spasm of the muscles are increased, which prevents the forward further elevation of the leg above a certain minimum. Then the Lassegue sign was positive on the right.

Q. What's the Lasague sign? A. When the patient is flat on his back and the lower extremity is lifted to the point of the beginning of pain so that the patient cannot lift his leg any further beyond which pain is produced, of course at that particular level the foot [48] is flexed inward which consists of excessive stretching of the muscle and the nerve and if that produces pain running down the leg it indicates that this excessive stretching caused a stretching of the nerve against whatever is pressing against it, and produces pain running down the extremity. It was positive on the left and negative on the right. The knee and ankle jerks, that is the reflexes, were normal on both sides. The right leg measured one sono-meter less than the left in diameter. There were no sensory changes at that particular time and

there was mild tenderness on pressure of the interspace between the fourth and fifth lumbar vertebrae.

Q. What is that an indication of, Doctor? A. That there is something sensitive there, the nerve root leaves at that particular level just to the right of the midline and pressure against that area will increase pressure against the nerve root. If there is something pressing the nerve root at the same time, ordinarily you can press this area, and if there is nothing pressing abnormally in the nerve root the nerve root moves without difficulty. If there is something in front of it and you press the muscle behind it then it produces the pain.

Q. Did you have any other findings, Doctor? A. Well, the patient walked very carefully and slowly so that I couldn't detect a limp at that particular time. But his gait was sort of a very careful one, as through he were [49] afraid to slip or he would make a misstep.

Q. Did you take any personal complaints from the patient? A. Yes.

Q. What did he tell you? A. He stated that he had pain in the lumbar region, that's the lower back, and the pain radiated to the right buttock, and to the right leg. When he sat or when he lay down he had pain in his back and his leg, but when he walked about he felt somewhat better although, as he told me, the pain was never completely gone even though he walked, but moving around helped relieve some of the pain in the back.

Q. Did you take any X-rays, Doctor? A. No, I did not.

Q. As a result of that examination, did you make a diagnosis? A. Clinically he showed evidence of a probable disc, a herniated disc at the L-4, L-5 interspace at the right.

Q. After you made that clinical diagnosis did you then check at my request the records in the State Insurance Fund? A. Yes, I did.

Q. What did you find, Doctor? A. Well, the Committee on Evaluation of Spinal Injuries of the Fondo, which is composed of the neuro-surgeon and an orthopedist, a radiologist and a doctor in physical medicine, and also a representative of the Fondo, they sort of compose a neutral committee and they examined the patient and the [50] myelogram and they found that a review of the myelogram revealed evidence of a herniated nucleus pulposus at this L-5, L-4 interspace at that particular time. Although the patient did have a herniated disc clinically they stated it didn't warrant surgery because he did not have sufficiently severe pain for surgery and they suggested he be referred for a disability rating.

Q. What's a herniated disc, Doctor? A. Well, a herniated disc is a prolapse or an extrusion of a portion of the disc material out of its normal situation, that is, between two vertebrae.

Q. I show you this diagram, Doctor, and ask you if you can identify this? Can you tell us what it is? And, what it represents? A. This is one of the vertebrae and this is the spinal cord, and this is the relative nerve roots, and here is the disc. Actually—

Q. I want to ask you, Doctor, would this in any way make it easier for you to explain to the Court the processes involved?

The Court: What's that chart, first?

Mr. Nachman: This chart was prepared, but it does not say who prepared it.

Trauma: Volume 1, Number 5, (See "Planning the neck Injury Case" by Leo Gelfand M.D., LL.B. and Marshall Houts LL.B.)

[51] A diagrammatic representation of the cross section of a cervical interspace illustrating the mechanism of the protrusion of the intervertebral disc and compression of the nerve root.

A. I think it is perhaps very graphic and perhaps the Judge would want to use it.

Mr. Nachman: Do you have any objection to that?

The Court: Do you need time to examine that, Mr. Rout? We may have a recess.

Mr. Rout: No, thanks, Your Honor. I think we will be able to pass on it in a moment. No objection.

Mr. Nachman: I offer it in evidence, Your Honor.

Mr. Rout: No objection.

(Mr. Nachman: It is admitted and ordered marked Exhibit 1 for libellant.

THE CHART PREVIOUSLY IDENTIFIED WAS THEREUPON ADMITTED IN EVIDENCE AND MARKED EXHIBIT 1 FOR LIBELLANT.

By Mr. Nachman:

Q. This isn't a lumbar disc, is it? A. No, it is a cervical disc.

Q. Would that make any difference in explaining this?

A. The only difference it might make is the fact that this space instead of having a spinal cord is really in the lumbar area, has a lot of these nerves, but it does not make [52] any difference because the question is the herniation, laterally against the nerves, so this is all we have to worry about, and this is very well done.

Q. So in the lumbar area there is no spinal cord? A. No; there is one other thing: I think this is really this way, cut like that, so one is looking down on it, because here's the back. This would be the front. It would be like this, looking down on it.

Q. You are looking down from the top? A. Yes.

The Court: You are looking into a well?

The Witness: Yes, sir.

By Mr. Nachman:

Q. What happens when one has a herniated disc, Doctor?

A. Well, this back line, this thick black line, is what we call the annulus fibrosus, a fibrous elastic band, the same thick-

ness of the disc at each interspace and it holds the inner portion of the disc known as the nucleus pulposus. This material is only semi-solid so that it is compressible to some extent. As long as this are, the annulus or the ring remains strong this disc will never collapse, it will never bulge out. But if any portion of this ring becomes weak the pressure of the body will compress the disc and naturally the disc, which is semi-solid, will tend to flow where the area is weakest. So that if this portion is weaker the pressure [53] of the body against this particular semi-solid thing will push it toward the weak area in this ring. This should be represented a little thinner than that. It is indicating a weakening in this particular area. If this weakening is sufficient so that the semi-solid material will push, say, enough to press against the nerve, then it will compress the nerve. As you see, this nerve is much thicker here, and thinner there, because it is compressed. And as long as the pressure is maintained against this nerve the patient will feel the pain running along the distribution of the nerve.

This nerve goes to the leg. Of course the patient will feel the pain running down the leg. Now, this, because they are semi-solid, sometimes will change in the amount of pressure, or the amount of pressure against the nerve will change so that certain positions which the patient may assume, may relieve the pressure against the nerve temporarily, because if the patient seems to have an individual knowledge as to just what position is best for him, each patient seems to have this individual knowledge. No doctor can say you will feel better with your leg up or down or on the side. Each patient knows which position is best for him. So that these particular cases may become better or worse during the day time or the nighttime or even weeks, depending on where this little budge is in relation to the nerve itself. As long as the nerve is free it is perfectly all right to have a bad disc, because it [54] isn't pressing against

the nerve particularly. But no sooner does it compress against the nerve then the patient has incapacitating pain. Not always, but usually, if the pressure is mild the patient may be able to stand the pain and to do certain activities. If it is severe, then of course they cannot do any hard work.

Q. If I understand you correctly, a herniated disc in and of itself is not necessarily disabling? A. No, it depends on where it herniates.

Q. And if it presses the nerve the disability is there dependent solely upon the amount of the pressure on the nerve? A. The amount of the pressure on the nerve.

Q. Does one necessarily have to sustain a herniated disc with a single trauma? A. No, not necessarily.

Q. To start from the beginning, are herniated discs the result of trauma? A. Yes.

Q. When you say they are not necessarily the result of a single trauma, would you explain that, Doctor? How could it come with multiple trauma? A. This ligament is about this thick, about this thick, I would say. Now, if sometimes a patients, let's say lifts something or slips and hurts himself, like in this particular patient who sat down like that, after he sat down there was a [55] great deal of pressure exerted on this particular area and the ligament here may tear some of those fibers. Now, when these fibers are torn they are healed in time, sometimes completely, sometimes incompletely, but if they are healed completely they are healed with fibrous tissues and lose their elastic fibers because the elastic fibers do not regenerate, they are healed with this fibrous tissue, more brittle, relatively speaking than the other, so that even though the symptoms may disappear there remains a relatively weak spot as compared to the rest of the annular ring.

Q. And if it is a relatively weak spot, is the back at that area, or is that particular disc more susceptible to being injured? A. If pressure is exerted in this particular area

again, this is the area that may rupture and usually does.

Q. Doctor, what effect do generative changes of the spinal column have, the whole spinal structure, upon your ability to withstand pressure? A. I didn't get the question, the meaning.

Q. Do advanced osteo-arthritic changes of the spinal column play any part in the spine on a disc to withstand trauma? A. The older a person gets the less likely he is to—that's very hard to say because discs can occur in young people too, depending on the amount of trauma that's there. But it may be that the older a patient gets that this particular thing [56] may become less elastic. But these people usually do not go through the exertions that a young person does.

Q. Doctor, when this patient saw you in 1960, did he tell you he had suffered an injury in 1951, to the back? A. He said he had a back injury, yes.

Q. Did he also tell you he had a back injury in 1959? A. Yes, he didn't say a back injury. He said his foot sort of slipped or twisted, and he never hurt his back.

Q. Would you sit down, Doctor? When that nerve is pinched at that point why does the patient feel pain in his leg and not in his back? A. Well, as a matter of fact, they feel pain in their back when the ligament is injured. They can feel pain in their back or they may have a muscle strain without injury, when they have pain in their back. Those are the ones that we call a muscle strain, that usually heal up completely. But as soon as this nerve is pinched, the reason they feel pain in the leg it is because it is like an electric current being applied to a wire, and the electric current which is the pressure applied to the disc, the nerve, which goes onto the leg, the pain will be felt where the nerve runs. Does that answer your question?

Q. Yes, Doctor, I want you to assume that in 1951 Mr. Federico Marin Gutiérrez sustained an accident while work-

ing for an employer in Ponce, as a result of which he was under [57] treatment for a period of approximately six months, that at that time he felt ~~he~~ testified he felt pain in his back and that he felt pain for some time after he returned to work in his back but that gradually the pain went away and that in 1956, on October 21st, while attempting to receive a sling load of merchandise from a vessel, he slipped on grains of substance, either corn or rice or beans, on the dock, and he fell seated and over to the right, that he was unable to get up unassisted and thereafter he was helped to the minor surgeon and the next day he reported to the hospital. That he was thereafter hospitalized during the time he was given massages, pills, heat treatments, and hot water bottles. And after that he was an ambulatory patient and thereafter in about a little more than four or five weeks he was discharged to work. But when he went back to work he testified that he continued to have pain not only in the back but radiating down the right side.

I want you to assume further that when he was examined for this injury in 1946 it was found that he had advanced osteo-arthritic changes of the spinal column of long standing, but that there was no evidence on the X-rays of any osseus pathology as a result of this accident, that he went back to work and in 1958 he stepped in a hole and was sent by his employer to the State Insurance Fund and was told to go back to work and went back to work the next day and complained of no injury at that time. But he continued to work [58] throughout 1957 and 1958 until June, 1959, when he testified his leg gave way upon him and he fell, but did not fall to the ground, and held on to a sling. That thereafter he was treated again by the State Insurance Fund, and that the pain in the right leg continued to get worse but it had continued throughout all this period of time. That in 1959 he was examined by the Back Committee as you have read from the State Fund records and they came

to the conclusion after myelographic studies that he had a herniated nucleus pulposus at L-4, L-5 on the right. And thereafter he was examined by you in February, 1960, and you made a clinical diagnosis of nerve root injury as a result of herniation of the intervertebral space at the L-4, L-5 on the right.

Doctor, can you state with reasonable medical certainty whether or not the accident that he described to you as occurring in 1956 was a proximate cause of his complaints and his injuries for which he had been treated in 1956, 1957, and in 1959? A. I think that was the contributing factor to his present condition.

Q. Doctor, can you state what relationship the 1951 accident played in this back that you have examined? A. Well, it is very difficult to state because he had recovered for three or four years, I understand and the diagnosis of lumbar sprain was made without any evidence of this pathology [59] at the time, and I had to depend on the examination by the physicians at that particular time. Upon those circumstances there was no evidence he had any disc pathology from the medical reports.

Q. Doctor, assuming he had just a lumbar sprain what would that do to his back with relation to subsequent trauma, if sustained? A. If he had what?

Q. A lumbar sprain in 1951, would it weaken his back in any way so he would be more susceptible to trauma at any other time? A. If he recovered completely there is no reason for it to be a contributing factor.

Q. Then, Doctor, what about the osteo-arthritic changes found in 1956? A. That we see in many patients who never had any trouble with disc.

Q. Can you isolate the 1956 from the 1959 trauma, to say that the man had no disc since he wasn't actually there was no myelogram and you didn't see him in 1959, can you say the 1956 accident wasn't a disc based upon the history

you have received? A. Based upon the history alone I would think it was a disc in 1956.

Q. Yes? A. Yes.

[60] Q. What effect would the 1959 trauma have upon the 1956 accident? A. It would seem that particular trauma which wasn't very severe, would have produced severe symptoms because the previous injury had already weakened the ligament, the annular ligament, sufficiently to allow a new injury to produce severe symptoms.

Q. Doctor, can you state on the basis of your examination of this man, whether or not in your opinion he is disabled? A. I think in his present condition he is disabled.

Q. When you say disabled, just exactly what do you mean, Doctor? A. Well, I don't think he is ever comfortable. I don't think he should do any hard work. In sitting or even in light work he feels this aching pain which is very common in herniated discs.

Q. Now, Doctor, can you state with any reasonable degree of certainty whether this condition you found in February 1960 is permanent? A. If he does nothing about it I think it would be permanent.

Q. Is there anything you recommend you should do about it, Doctor? A. Well, I thought he should submit to surgery because the way he is at this particular time he just can't do any particular type of work and although we cannot guarantee the results of surgery I feel he has much better chance of recovering [61] with surgery than without surgery.

Q. Isn't it true as you testified earlier that some days discs are better and some days they are worse? A. Yes, that's a chronic picture.

Q. Is it possible for him to work at all with this condition? A. Oh, yes. At certain times I think people who have definite ruptured discs, but if the pressure is very mild, learn to prevent excessive pressure in this particular area

and just drag along working. They can work when the pain is not too severe. They may have discomfort but it may not be sufficient or severe enough. It only may prevent them from doing hard work.

Q. But on the basis of your examination and the records of the State Insurance Fund it is your recommendation that he undergo the surgery? A. Yes, I would definitely say so.

Mr. Nachman: Your witness.

The Court: We will take a ten-minute recess.

(A short recess was then taken.)

Cross-Examination

By Mr. Rount:

XQ. Doctor, you stated that herniation only results from trauma, on direct examination, did you not, or did you mean to qualify that? A. Practically always.

[62] XQ. It is possible, however, for it to occur as the result of minor, relatively normal activities in a human being's daily life? A. Well, that's trauma too.

Q. But herniation can result from— A. Not from normal activity.

Q. It can't result from the activities which someone may resort to in the course of his life without him knowing he has been injured? A. What activities are you referring to?

Q. Reaching, stretching, getting out of bed, doing exercises, athletics? A. Where are you referring to?

Q. I am asking whether in the normal activities of human beings whether he can suffer from herniation without any injury which lays him up? A. You have to have an injury to the annulus before you can have a herniated disc.

Q. But I may not be aware of the injury of the annulus. A. It depends on the pain threshold of the patient.

Q. I am asking if it would be possible for him not to be aware of the injuries? A. Is what possible?

Q. Is it possible in certain instances. A. Exactly is what possible?

Q. Is it possible in certain instances for an individual [63] to suffer degeneration or deterioration of the annulus fibrosus without him knowing about it? A. If he does not know he has an annulus fibrosus any back pain may be an injury to the annulus fibrosus but he does not know he has an injury to the annulus fibrosus so he would never think of it being related to this pain in the back that he has.

(The question was read back by the Reporter.)

The Witness: If he has deterioration or degeneration he won't know about it unless he has a disc protrusion.

XQ. The answer is yes, isn't it? A. No, it isn't. If a man has a degeneration or deterioration he can even have a ruptured disc and if it does not press against a nerve he won't have nerve pain. If the nucleus does not protrude he won't have any symptoms due to the annulus.

XQ. By degeneration you mean weakening of the annulus? A. Any stretching of the fibers of the annulus. That's what they are for, to stretch in various movements.

XQ. I am talking about stretching beyond that does not return to its normal position. Then the patient would have some pain in his back? A. Then the patient would have some pain.

XQ. Then you are saying it could never occur except with [64] a pain in the back? A. I would say this, that a patient may not remember having the pain in the back at that particular time; the pain may have occurred ten years, two years, before.

XQ. If you assume that in 1951 in the injury of that date that the libelant in this case had pain in his left leg would that change the conclusion that you came to on direct testimony? A. What conclusion are you referring to?

XQ. The conclusion between the relationship of the 1956

injury and his present condition? A. Will you repeat your question, please?

(The question was read back by the reporter.)

A. That the 1956 injury was the cause of this condition?

XQ. Is related to this present condition. A. I would say if he had pain in his left leg in 1951 then I think the injuries in 1956 had nothing to do with one in 1951. It may have been related to another level. He may have had a herniated disc in a different place, which healed up completely, so this picture is a completely different picture. It would more than reaffirm my conclusion that this 1956 injury based on what you told me is the actual cause of this man's present condition.

XQ. If you assume further that there was a diagnosis of sciatica in 1951 would that change your opinion? A. Which side?

[66] XQ. On the left side. A. It would definitely reaffirm my opinion that this injury in 1956 on the right side was definitely not related to the injury on the right side.

XQ. Doctor, if we further assume in addition to sciatica on the left side—

The Court: Excuse me just a minute. We will take a short recess of ten minutes.

(A short recess was then taken.)

Mr. Rout: We have an outstanding question, Madam Reporter.

(The question was read back by the Reporter.)

By Mr. Rout:

XQ. If we further assume sciatica in the left side and pain in the left side, that there was no pain in the right leg as the result of the October 21, 1956 injury, which is involved here, would your conclusions as stated on direct testimony have changed? A. My conclusions would not have changed, but would have been even strengthened with

this new evidence which I didn't know existed. I didn't know he had pain in the left side in 1951 and if he did, in my opinion it would show that either the disc, if he had a herniated disc at that time, may have been at a different level or healed up completely, because usually if they have an injury which results in sciatica let's say on the left side, if that condition existed all these years, that a [66] subsequent injury practically always reproduces the original sciatica on the same side so that in that instance it would seem to me that therefore the man's injury was that in 1951 he had definitely completely recovered and that this was a new injury which resulted in pain on the right side.

XQ. Assuming further that in connection with this October 1956 injury he suffered no pain in the leg but merely pain in the inguinal area, does that change your conclusion on direct testimony? A. It does not, because many times spasms in the back and buttock muscles will cause pain in both inguinal areas because the muscles are attached to the back.

XQ. If it were a protruding disc, Doctor, there being pain in the right leg. A. It depends. The disc may be protruding but not enough to depress the root and as the hours go on, first, that hit on the buttocks, and it may take two or three days before that liquid mucous would force itself through the opening. It may take even longer.

XQ. Wouldn't these same symptoms be a diagnosis for sprain? A. Which same symptoms?

XQ. In 1956 with a pain on the right side, with no pain in the right leg? A. I think one shouldn't jump to a hasty diagnosis until [67] he observes the patient for a short time. I don't know what happened in 1951; I didn't examine him at that time, but I would say that the physician who makes a diagnosis of just a lumbar sprain on merely

observing the patient at the time of the injury is laying himself open for criticism.

XQ. Would you read the question back to the witness, please?

(The question was read back by the Reporter.)

A. Is that the way you asked the question? Do you mean the right lumbar region or the inguinal region?

XQ. The inguinal region. A. Without any pain in the back?

XQ. Without pain in the leg; pain in the lumbar-sacro region. No pain in the leg, is the question. A. I am confused. Please repeat it.

XQ. Let me reword the question: If the information that you had before you as the result of the October 21st, 1956, injury was that he had a pain in the lumbar-sacro and in the inguinal region in the right side, wouldn't a lumbar sprain be a proper diagnosis? A. It would depend on what I found on examination of the patient.

XQ. It isn't conclusive, is it? A. It would depend. If I found the limitation of straight leg raising or positive Lassague on the history alone, it is impossible to make a definite diagnosis merely on a pain in the [68] back in the inguinal region. It has to coincide with the clinical diagnosis.

XQ. You can't diagnose a herniated disc either on that basis, could you? A. What basis?

XQ. The findings of the 1956 injury. A. You are referring to the history of the thing but those are statements, those aren't findings. What I mean, the findings that the physician found on physical examination. All you asked me, if a patient has a pain in the right lumbar region, and pain in the right inguinal region, can you make the diagnosis of a disc? He might have an appendicitis with those symptoms. I would be very likely to have that as a diagnosis I should rule out.

XQ. What symptoms or what clinical history or what factors or findings would you take into consideration in stating your conclusions on direct examination? A. On direct examination? I read them a little while ago. Do you want me to repeat those?

XQ. Yes. A. He had a loss of his lumbar curve, which, as I said, indicated muscle spasm.

XQ. I am not talking about your particular examination in 1960. I am talking about other factors you had before you for the 1956 injury alone, upon which you based your [69] conclusion. A. The very fact that he gave a history of slipping, falling on his buttocks, having pain in his back and his buttocks, and later on—I don't know how much later—he started having a radiation of pain along his right leg. That is a history which is suggestive of root pressure probably due to a herniated disc.

XQ. Can you state for us whether he suffered a herniated disc for the first time in his 1959 fall on that basis, the basis of your examination? A. Will you state the question again, please?

(The question was read back by the Reporter.)

A. On the basis of my examination?

XQ. You can't state that, can you, Doctor, on the basis of your examination whether he suffered a herniated disc?

Mr. Nachman: Objection. He hasn't answered the first question.

The Court: Let him answer.

A. On the basis of my examination in February 1959?

Mr. Nachman: 1960.

The Witness: 1960. I am sorry. The only thing I could decide was that the man had a herniated disc between L-4 and L-5 based on his history which he gave me of the accident which occurred in 1956, where he had continuous discomfort in his right leg, which became worse and better and then worse, and better. I concluded that he had a

herniated disc in 1956, whose [70] symptoms was aggravated by this twisting motion when he slipped in 1959.

XQ. Did he tell you about his injury in 1958? A. I am not certain. I didn't include it in my findings.

XQ. He told you he suffered pain in his right leg after his 1956 injury. You mentioned that several times?

A. Yes.

XQ. Is that a critical symptom, Doctor, frankly, in your diagnosis of 1960? A. A critical symptom as to making up my mind whether he had a disc? Yes, I would say so. It is an important factor.

XQ. Did he state, Doctor, how long it took him to recover from his 1951 injury, in your examination? A. He said several months.

XQ. Did he say how long it took him to recover from 1956 injury? A. He said he had relatively marked pain for about a month or a month and a half, which gradually became a little better, but that the pain had never completely left him, although he was able to stand the discomfort.

XQ. Did he tell you he had a complete examination in 1958 for the purposes of employment? A. I didn't ask that. There was no reason for my asking that.

XQ. He didn't report it? A. No.

[71] XQ. If you assume further that in 1958 he had undergone a thorough general physical examination and had been certified to be in good health and able to perform certain duties as a carpenter, would that have changed your opinion in 1960 upon your examination of the libellant?

A. I would have to know who did the examination and the type of examination that was done and no matter who did, if I have stated if his disc protruded somewhat where he didn't have very marked symptoms I can see where a general examination which wouldn't include a very careful neurological examination might certify him for that type

of work and still wouldn't negate the fact that he still might have had some mild symptoms secondary to a herniated disc which was present but not pressing markedly against the nerve root at the time.

Mr. Rout: No further questions.

Redirect Examination

By Mr. Nachman:

Q. Doctor, you stated that if we assumed that after the 1951 accident that there was sciatica on the left it would strengthen your conclusion that the 1951 accident played no part in his present back symptomatology? Would you explain why? A. As I have stated before, if there is an injury to the annulus fibrosus, it usually heals with fibrous tissue, and not with elastic tissue. Where this might be strong enough in certain instances to prevent the disc from herniating at that place against the nerve root any more, it always remains [72] a relatively weak spot. Now a patient heals the annulus fibrosus and then as we say he is cured of his disc. The fall that he had in 1956 might have been of such a nature that the force of the impact, the greatest amount of force was concentrated not on the area, and ruptured the annulus at another place, which was a sufficient degree greater than the first one so that the nucleus could go through this weak point and wouldn't affect the other area, and that's one of the reasons I feel that the 1956 injury was a completely separate thing because usually if the apex of the force—when the man forcibly sits down and a force is shot up as it is at the same disc level as there is a weak area in that particular annulus, the annulus which was injured before practically always ruptures in the same place. Therefore it would stand to reason from a scientific viewpoint that you should have a repeat on his pain but you have just the opposite, the im-

pact must have been at a different level because the pain was on the opposite side.

Q. Can you get sciatica from herniation of the disc and nerve root pressure at different levels? A. Yes.

Q. Why is that, Doctor? A. Because there are five lumbar roots and about five or six or seven nerve roots further down combined to form the sciatic nerve. So pressure at any of these roots no matter what level will cause pain along the leg. It can be [73] L-3, L-4, L-2, L-3, L-4, L-5—usually it will cause pain behind the leg. If it is higher it may cause pain at the thigh, but usually the lower areas will cause pain along the sciatic nerve. There are at least four or five different levels which can cause pain along the sciatic nerve.

JOSE DEL PRADO

a witness called by and on behalf of the respondent, upon being examined testified as follows:

[74]

Direct Examination

By Mr. Rout:

—Q. Please state your name? A. Jose del Prado.

Q. Your address? A. Ponce, Puerto Rico.

Q. Your occupation, doctor? A. I am a physician.

Q. Do you know the libelant in this case, Mr. Marin Gutierrez? A. Yes, I know him.

Q. Can you point to him, please?

Mr. Nachman: I concede he knows him.

A. There he is.

Q. Did you interview the libelant on or around October 21, 1956? A. This patient came to the Fondo in Ponce in 1956, and the only intervention I had with him was that I procured one X-Ray of the spinal cord.

Q. May I have the 1956 State Insurance Fund file? I would like to show the witness respondent's Exhibit 4

for Identification, and ask him if he can identify it?

A. Yes, I can.

Q. Would you tell us what that is, Doctor?

The Court: That Exhibit was admitted.

[75] Q. Would you tell us what Exhibit 4 is, please, Doctor? A. This document is an order of the State Insurance Fund for an X-Ray.

Q. Did you sign that order? A. Yes, I did.

Q. At the time you ordered that examination, did the libelant complain of pain in his right leg?

Mr. Nachman: I object.

The Court: The witness has stated that the only intervention he had with the libelant was to procure an X-Ray of the spinal cord.

Q. Did you prior to your ordering this X-Ray—did you interview the libelant, Doctor? A. Yes. He came over to my desk with this order which is typed by the secretary, and then we have to read what the secretary types and then, it is in accordance with what the patient says, we continue with the patient. This is the history given by the patient to the secretary. Then the patient comes to the physician's desk with this sheet and we have to check to see whether what the secretary wrote is the same thing that the patient says. Then if we are in agreement, the prescriptions are made for laboratory analyses, etc.

Q. Did you, Doctor, check with the libelant? A. Yes, sir.

Q. And what was it that you verified on that document?

[76] A. Well, he alleged that upon attempting to hold a draft he slipped and fell sitting down on the pavement, feeling pain in his buttocks, his waist and the inguinal region of both sides. That's all.

Q. He said nothing about pain in his right leg? A. No. At that time, no.

Q. Doctor, did you ever examine libelant on behalf of

a prospective employer? A. Yes, in the last days of December 1957 I examined him to get a job at Brown-Root, and we had to do a careful examination of the patient because this is the regulation of the Brown-Root Company, and if the laborer is completely O.K. we give a certification of good health and send him over to Brown and Root.

Q. Prior to that examination for the purposes of employment, had you ever examined libellant? Any other time?

A. Prior to what?

Q. Prior to that? A. In 1956, when he went to the State Insurance Fund.

Q. In connection with your examination in December 1957, did he complain of any pains? A. No.

Q. In the back? A. No.

Q. In the leg? [77] A. No.

Q. Did you give him any tests to determine whether he would have pain in those areas? A. Yes, we have to do that.

Q. Would you tell us what examination you conducted?

A. It is just to bend the body. We test the reflexes, the blood pressure, the heart, lungs, the sight.

Q. Did you conduct a knee jerk examination? A. The patellar reflexes, yes, we have to do that.

Q. What was the result of that examination, Doctor?

A. It was normal.

Q. Did you make any recommendation to Brown-Root?

A. We gave the recommendation that he was in good health at that time.

Mr. Rout: No further questions.

Cross Examination

By Mr. Nachman:

XQ. Doctor, did you get a subpoena to testify here today? A. Yes, sir.

XQ. Do you have that subpoena with you? A. Yes, sir.

XQ. May I see it please, Doctor? Doctor, this subpoena was given to you by somebody from the firm of Hartzell, Fernandez and Novas? A. It was delivered to me at my office.

[78] XQ. And that's in Ponce? Who delivered it, Doctor? A. Mr. Bartolomei.

XQ. And this subpoena asked you to bring all records, correspondence and other documents pertaining to the injury sustained to Mr. Marin Gutierrez in March, 1958? A. Yes, I did it.

XQ. I see that you did. Did they ask you to bring the reports that you performed in December 1957? A. No, they didn't.

XQ. Did you take out a copy of that report to refresh your recollection before testifying? A. No, this is a blank that Brown and Root sent with the laborer and we have to send it again.

The Court: You don't keep any duplicates of that? A. No, just a little card that we write "approved" or "rejected."

XQ. Then do you have any independent recollection whatsoever of examining him in December 1957, other than the fact that his name appears on a card and you approved him? A. We have a card.

XQ. Do you remember what you did on that particular examination, or are you testifying that was the routine of what you did? A. This was the routine physical examination.

XQ. But do you or not have any independent recollection [79] of that examination? A. No, this is a general routine examination.

XQ. And you don't even have a copy of that examination in your office? A. No.

XQ. And you have no record of the questions you asked

him, or the answers he gave you in December 1957? A. No, there is no record of that.

XQ. And before you came here today, Doctor, did you refresh your recollection with any records you had as to the time you saw this patient in October 1956? A. I don't understand the question.

XQ. Well, Doctor, when you were subpoenaed you were subpoenaed to testify only as to the March 1958 occurrence upon which you were asked nothing on direct examination, is that right? So when you came to court this morning, that's all you knew about, that you were going to testify as to this examination of 1958, and yet on direct examination you were asked nothing of the March 1958 occurrence, is that right? What was the first time you knew you had anything to do with this patient on October 1956?

A. Because the attorney showed me the record of the State Fund which is signed by me.

XQ. Now, at the time of that order, which I think is respondent's Exhibit 4, at the top of that order for X-Ray report, [80] is a history, is that correct? A. Yes.

XQ. You didn't take that history yourself, on that day, did you? A. No.

XQ. As a matter of fact, you didn't order that X-Ray until 7 days after the accident, isn't that so? A. I don't remember the day exactly.

XQ. Or the day after the accident. I am sorry, Doctor. This history was taken by some other person on the day of the accident, is that correct? A. That's correct.

XQ. And then the secretary typed up that order, and the man was at your desk as I understand it, and you read him this, is that correct? A. I did what? Yes, I read it.

XQ. And you asked him if he was in accordance with what was read? A. Yes, sir.

XQ. You didn't take an independent history of how the

accident occurred, and what pains he had, in what part of his body? A. Well, we have to do it.

XQ. Somebody had to do it, but did you do it? A. I asked him, yes.

[81] XQ. What did you do, besides that? A. I asked if it was correct, the history that he gave to the nurse.

XQ. Did you ask him anything else besides whether or not this was correct? A. Yes. We have to ask if they have pain in any other place, or if he can . . .

The Court: But it isn't what you have to do, but what you did.

A. I don't remember this specific case.

XQ. Doctor, do you have any specialty? A. No, I am in general practice.

XQ. Then you came here specifically, then, not to testify as an expert but as a fact witness? A. No, I came for the case of 1958.

XQ. And that was all they subpoenaed you for? A. Yes.

Mr. Nachman: No further questions.

Redirect Examination

By Mr. Rout:

Q. Did you bring certain documents with you? A. Yes.

Mr. Rout: I would like to have this medical report marked for identification.

MEDICAL REPORT OF MARCH 26, 1958, WAS MARKED IDENTIFICATION 7 FOR RESPONDENT.

[82] Q. Doctor, would you tell me whether this document purports to bear a signature? A. This is my signature. This other one, you mean?

Q. This signature? A. This is mine.

Mr. Rout: I would like to offer the medical report of March 26, 1958, as part of respondent's evidence.

Mr. Nachman: For what purpose?

Mr. Rout: To establish the results of a medical exami-

nation conducted by Dr. del Prado in connection with libelant's injury of 1958 to his back.

Mr. Nachman: The libelant said he was sent by somebody else, that he did not complain and was dismissed, and I object to its admission to prove that he had an injury. I admit that a physical examination was conducted on that date, and it was found negative as the libelant testified.

Mr. Rout: I may have used the word "injury" improperly. However, I would like to submit that.

The Court: What do you intend to prove with this?

Mr. Rout: Through my medical expert witness, I intend to show that any subsequent injury to the 1956 injury or any complaint of any kind might have some bearing on his present condition, and on the other hand the fact that he had a clean bill of health, if that's what this document says, might have some bearing.

The Court: He said he didn't suffer any injury. He [83] testified as to ~~that, and~~ what does the report say? That he did not suffer anything.

Mr. Nachman: "No hay historia de trauma".

Mr. Rout: This man suffered injury, and if we can sufficiently establish that he was in perfect health in 1957, which resulted in his zealous employer sending him to the Fondo, finding that he was in good condition, then, and would be right now except for the July injury and everything that Dr. Rifkinson testified to might have resulted from 1959 alone.

The Court: Dr. Rifkinson testified that all he has now was the result of the 1956 injury, and he examined the libelant in 1960.

Mr. Rout: But an intervening report by a physician, saying that he had nothing . . .

The Court: That he said he had nothing.

Mr. Rout: Seems to be of some relevance here.

The Court: I am going to permit this. He complained of pain.

Mr. Nachman: It says he complained of pain.

The Court: There was evidence of ganglia, that's Exhibit 7 for respondent.

MEDICAL REPORT OF MARCH 1958 WAS ADMITTED IN EVIDENCE AND MARKED EXHIBIT 7 FOR RESPONDENT.

Mr. Rout: I have no further questions, Your Honor.

[84]

Recross Examination

By Mr. Nachman:

XQ. Did you take the history of this case in March of 1958, Doctor? A. Yes.

XQ. And did you make the examination? A. Yes; I did.

XQ. I refer you to the third paragraph, Doctor. Will you tell us what it says there, in English? A. On examination in the lumbar region there is no external evidence of trauma, nor history of trauma.

XQ. What does that mean, Doctor? A. That on that occasion he received no injury in the lumbar region.

Mr. Nachman: I have no further questions, Doctor.

[85]

FELIX A. ROMAN

a witness called by and on behalf of the libellant, was examined and testified as follows:

Direct Examination

By Mr. Nachman:

Q. Please state your full name? A. Felix Roman.

Q. Where do you live? A. At the Ponce Playa.

Q. What is your occupation? A. I work at the piers.

Q. Do you know the libellant, Federico Marin Gutierrez?

A. Yes, I do.

Q. How long have you known him? A. About 20 years.

Q. Did you see an accident that he sustained? A. Yes, sir.

[86] Q. Were you working on that day? A. Yes, sir.

Q. For whom were you working on that day? A. for the Waterman Dock.

Q. And where were you working? A. I was working on the apron, at hatch No. 1.

Q. Do you remember when the accident occurred? A. I am not exactly certain, but I remember it was around 1957.

Q. And where was the libellant working when the accident occurred? A. He was at the apron, contiguous to mine, at No. 2.

Q. And what were you discharging from hold No. 1? A. My hatch was unloading wood.

Q. Do you know what was being discharged from hatch No. 2? A. General cargo.

Q. In boxes, or in bags? A. In bags.

Q. And can you tell me, do you recall what time the accident occurred? A. Between quarter after 3:00, and 3:30.

Q. In the afternoon? A. Yes, sir.

Q. And can you tell us what you saw? [87] A. I saw when Federico fell to the floor.

Q. What, exactly, did you see? Did you just see him fall? A. When he fell, and when I went to try to help him, one of my fellow workers went and lifted him up.

Q. Was there anything on the pier? A. Yes, there was a lot of rice and beans scattered around.

Q. Do you know where that came from? A. Yes, from the drafts.

Q. How did it come from the drafts? A. Sometimes there would be broken bags.

[101]

CARMELO FRATICELLI

a witness called by and on behalf on the libellant, was examined and testified as follows:

[102]

Direct Examination

By Mr. Nachman:

Q. What is your name? A. Carmelo Fraticelli.

[103] Q. Mr. Fraticelli, do you remember when the accident occurred? A. Yes, sir.

Q. When did it happen? A. In 1956.

Q. Do you remember the month? A. March, I mean October.

Q. And do you remember the ship? A. It was a Waterman boat. I don't remember the name.

Q. Were you working aboard or ashore? A. Ashore.

Q. What hatch were you working in? A. No. 2.

Q. Forward or aft? A. In No. 2 forward.

Q. Who was your companion? A. Federico Marin.

Q. Did he have an accident on that day? [104] A. Yes, sir.

Q. At what time? A. between 3:00 and 3:30 in the afternoon.

Q. And did you see the accident? A. Yes, sir.

Q. What happened? A. We were unloading general cargo. The bags were broken and grains of rice and beans and feed would fall on the floor. And we were putting the load on carts. When Marin Gutierrez and I went to pull on the cart he slipped and fell on the floor.

Q. What caused him to slip? A. Because of the grains that were on the floor. The waste from the bags.

[105] Mr. Nachman: I don't know the basis for the objection.

The Court: I believe the objection is well taken, and the question and answer are ordered stricken. Now, the other

answers he gave are questions of fact that the grains had spilled, that they could not sweep it, that the company had to take care of it.

Q. When did you start work on this day, Mr. Fraticelli?

A. At 7:00 in the morning.

Q. And when did you start to discharge bags of merchandise? A. Beans were in the drafts from the time we started to discharge cargo.

Q. And when, for the first time, did you notice that there were broken sacks? A. From 8:00 in the morning on.

Q. And, Mr. Fraticelli, did the condition continue all day, or did anybody clean up the dock? A. That went on the whole day.

Q. And these grains that came on the dock, did they fall from the draft while they were still attached to the ship?

A. Yes, sir.

Mr. Rout: I move that the last question and answer be stricken. It is leading.

The Court: It is ordered stricken.

Q. Did you see the grains fall on the dock, as you were handling the cargo on the dock?

[106] Mr. Rout: ~~Objection~~, Your Honor.

The Interpreter: He is just saying it different, that's all.

Mr. Nachman: I will withdraw the question.

Q. Where did you see the grains come from? The grains that fell on the dock? A. From the draft.

Q. Where was the draft when you saw the grains falling down? A. It was coming from aboard the ship.

[110] JOSE ANTONIO IGUINA REYES

a witness called by and on behalf of the respondent, after having been first duly sworn was examined and testified as follows:

Direct Examination

By Mr. Ront:

Q. Please state your full name? A. Jose Antonio Igüina Reyes.

Q. Your address? A. Ponce, Puerto Rico.

Q. What is your occupation? A. Physician and orthopedic surgeon.

Q. Would you stipulate as to the qualifications?

Mr. Nachman: I would stipulate that he is an orthopedic surgeon, but you are not calling him as an expert.

The Court: You stipulate that he is qualified?

Mr. Nachman: As I understood, he is not being called as an expert, but just as a witness.

Mr. Ront: I think they are synonymous, so long as you stipulate that he is to be called as an orthopedic surgeon.

Mr. Nachman: It is quite different,—if he is a fact witness. There is nothing to stipulate. He admits he is an orthopedic surgeon.

Mr. Ront: In the event that some of the man's testimony develops to require statements of expert testimony, will [111] you stipulate that he is an expert?

Mr. Nachman: I don't know if you can specify that he can testify as an expert in this case.

The Court: Then you don't concede—

Mr. Nachman: I concede his qualifications, but not his being able to testify as an expert.

The Court: Even on a hypothetical question?

Mr. Nachman: He hasn't seen this patient since October 1956, to my knowledge.

The Court: But if a hypothetical question, based on the evidence of record is put to him, as an expert, you concede that he could answer it?

Mr. Nachman: Sure, he could answer it.

The Court: All right.

Q. Doctor, do you know the libelant in this case, Federico Marin Gutierrez? A. Yes, I do.

Q. Will you point to him, please? A. That gentleman there.

Q. Did you examine Federico Marin Gutierrez as a result of an accident which he suffered on October 21, 1956?

A. Yes, I did.

Q. Please state in detail the examination that you conducted? A. I did a routine orthopedic examination on 21 October 1956, going all through the movements of the trunk, the [112] reflexes, sensory, and percussion, and palpation.

Mr. Nachman: what was the last? A. Palpation.

Q. Were X-Rays taken of the libelant at that time? A. Yes, sir.

Q. What were the results of the X-Rays? A. The results of the X-Rays were negative for fracture or dislocation. X-Rays were taken of the sacro-lumbar spine and they were negative for fracture or dislocation, and they show that the patient had a moderate amount of osteo-arthritic changes of the 5th lumbar vertebra and the sacrum.

The Court: That was arthritis of—? A. Osteo-arthritis of the 5th lumbar vertebra.

Q. In your opinion, what injury did the libelant suffer as a result of this accident of October 21, 1956? A. The libelant suffered a sacro-lumbar sprain that produced a low back pain, due to a fall, sitting hard on his buttocks. He slipped and fell on his buttocks. That's what I call, sitting hard.

Q. At the time of your examination of the libelant, what was your opinion with respect to his recovery from his October 21, 1956, accident? A. Well, he was completely recovered from his accident of October 21, 1956.

Mr. Nachman: I object, and I ask that the answer be [113] stricken.

The Court: Yes, the answer is not responsive, because if he examined him on October 21, 1956, and the accident was on October 21, 1956, he could not have been completely recovered. What you asked is about his recovery after he examined him. Please repeat the question.

(The question was read back by the Reporter.)

Q. Did you understand that question? A. Yes, I did. Could I elaborate a little?

The Court: You may.

A. I examined the patient again on November 26, 1956.

The Court: Oh, that's different.

A. And then on that date, November 26, 1956, I found that he was completely recovered from his injuries of October 21, 1956.

Q. In your opinion, Doctor, was he left with any permanent disability as a result of the accident of 1956?

A. No, sir.

Q. What was the conclusion which you came to on behalf of the State Insurance Fund as a result of your examination? A. That he was completely recovered, and returned to his condition prior to the accident of 21st of October 1956, and that he should be discharged without any incapacity.

Mr. Rout: No further questions.

[114]

Cross Examination

By Mr. Nachman:

XQ. Doctor, on your examination of October 21, 1956, when you examined his trunk for bending, what did you find? A. On the examination of the 21st?

XQ. Of the 21st? A. Of the 21st of October, that day he was taken to the dispensary and that was the same day

he allegedly suffered his accident, and he was complaining of low back pain.

XQ. Yes? A. And that day we took the X-Rays.

XQ. Now, Doctor, I asked you what you found in his bending? What were your actual findings, you made the examination, what did you find? A. This patient was complaining of real severe pain, so we found—

The Court: Severe pain where? A. In the lumbar area, and he had limitation of the range of motion of the trunk and spasm of the paraspinal muscles.

XQ. Do you have your report of that examination, Doctor? A. I have a report here.

XQ. Do you have a report of that examination; where are your notes and the report that you made of the notes of that examination of 1956? Do you have how many degrees his motion was restricted? What his reflexes were, to the patellar reflex? [115] A. Not on that date.

XQ. In other words, you have no record whatsoever of that date, except for the fact that you examined him. That's the only record you have? A. That's right, but I can recall.

XQ. You can recall from the printed words, that appear from the final decision of the Fondo, in your letter to the Fund, because all you have before you is the letter to the Fund in San Juan, isn't that correct?

The Court: You answer the question.

A. That is correct.

XQ. All you have is a letter that you wrote to the Fondo? Nothing to refresh your recollection as to how far he could bend, what his reflexes were, what his actual allegations of pain were? You didn't take a history, did you? A. No, sir.

XQ. So all you are testifying from is from a piece of paper and your conversation with the attorney for respondent? A. From my piece of paper, let's put it that way.

XQ. Didn't you have a conversation with respondent's attorney? A. Through the telephone, yes.

XQ. Didn't you also go over a list of questions you were to answer on the stand? A. Yes, for 20 minutes.

[116] XQ. Weren't those questions typed out? A. Yes, they were.

XQ. But you have no records with which to answer these questions? A. Well, I have some records here.

XQ. Just that letter? A. The letter.

XQ. Doctor, did you know that after you discharged this man in November 1956, that he prosecuted an appeal to the Industrial Commission for a period of three or four months? A. That I don't know.

XQ. And did you know that he alleged in all those appeals that he had pain, radiating down his right leg? A. That I knew yesterday.

MAX RAMIREZ DE ARELLANO

a witness called by and on behalf of the respondent, after having been first duly sworn, was examined and testified as follows:

Direct Examination

[117] By Mr. Rout:

Q. Please state your full name. A. Max Ramirez de Arellano.

Q. Your address? A. No. 312 Professional Building, Santurce, Puerto Rico.

Q. Your occupation, Doctor? A. Physician and surgeon.

Q. Do you have any speciality in the practice of medicine? A. Neurological surgery.

Mr. Rout: Will you concede the qualifications of the doctor?

The Court: Do you concede the qualifications?

Mr. Nachman: Absolutely.

By Mr. Rout:

Q. Do you know the libelant in this case, Doctor? A. I do.

Q. Will you please point to him? A. The man in the dark blue suit.

Q. Did you conduct an examination of the libelant?

A. I examined Mr. Marin Gutierrez on March 15, 1960.

Mr. Nachman: Do you have a copy of the report?

Q. Please state the details of the examination which you conducted. A. I performed a neurological examination on Mr. Marin after taking his history. Physical findings were as follows:

[118] I found one-half inch atrophy of the right calf as compared to the left. The lumbar lordosis was lost. That is, his back was flat. The lumbar curve was erased. There was no list of the back toward either side. There was slight tenderness to pressure to the right of the 5th lumbar spinous process. There was marked tenderness to pressure over the course of the right sciatic nerve and both calves were tender to pressure on squeezing. On the right side the straight leg raising test produces pain at only 30° elevation, the pain starting at the right ankle and radiating up the calf to the popliteal space and back of the thigh. On the left side the test produced pain at the ankle only, and only when the leg is elevated up to 60°. No sensory loss was found. The right ankle jerk was absent; the left was very weak. The knee jerks were moderately brisk and were equal on the two sides. Plantar flexion at the right foot was weak, possibly because of pain in the right Achilles tendon. The patient walked with a slight limp on the right lower extremity. Forward bending was rather limited, the patient reaching only to within one foot from the floor. In summary of positive findings, he showed: one-half inch atrophy of the right calf; absence of the right ankle jerk; strongly positive right straight leg raising sign; loss of lumbar lordosis; limitation of forward

bending; from the history, positive myelogram showing filling defect at L4-5. My impression was probably a herniated nucleus pulposus at L4-5 or at L5—S1.

[119] Q. Did the libelant relate to you the accident of October 21, 1956? A. Yes, he did. He said that in 1956 in October he had slipped while at work, falling in a sitting position.

Q. Did he say what pain he suffered? A. He said by the end of the day's work he had intense pain in the low back, and right inguinal region. He was hospitalized about eleven days and on November 28, 1956, was given his final discharge to duty.

Q. Would you tell us where is the right inguinal region? A. It lies between the thigh and the lower portion of the abdomen.

Q. Did you, Doctor, at my request make an examination of the State Insurance Fund records in connection with the libelant's injuries of 1951, 1956, 1958, and 1959? A. I did.

Q. Will you please state, in your opinion what injuries libelant suffered on October 21, 1956, as a result of his accident? A. Taking the accident as an isolated occasion or in view of the complete history that is available?

Q. I just want your opinion as to the injury he suffered in 1956. A. The fall in 1956 produced a lumbar-sacral pain and pain in the right inguinal region. I believe one would properly diagnose as a lumbar-sacral strain.

[120] If there were further evidence or had one been able to examine the patient and find other signs, one might make a diagnosis of something else. But a history of a fall followed by pain for a month in the lumbar sacral region one would call it only a strain.

Q. In your opinion was libelant left with any permanent disability as a result of his 1956 fall? A. Again, not having examined the patient after his period of recovery one cannot state categorically. However, he returned to work as

a longshoreman, which is a very heavy, hard work, as I understand it. I assume he had recovered from that injury.

Q. You heard Dr. Rifkinson's testimony, did you not Doctor? A. I did.

Q. And you have stated your own opinion to us just now. Can you state for us with what degree of medical certainty a diagnosis can now be made of the result of libelant's accident in 1956? A. You mean as to diagnosis of the injury produced?

Mr. Nachman: Your Honor, I object. That's not what Dr. Rifkinson testified to. Dr. Rifkinson didn't make a diagnosis as a result of the accident. He was asked a hypothetical question as to proximate causation, and I think this isn't the right way to cross-examine Dr. Rifkinson by putting Dr. Ramirez on the stand and saying with what degree of medical certainty, [121] because the hypothetical question is placed in terms with reasonable medical certainty, and now talking between the degrees of medical certainty by the doctor. I don't think we are talking the same language. He isn't cross-examining Dr. Rifkinson, nor Dr. Ramirez. This is his own witness. If he wants opinions of Dr. Ramirez I think he has the right to ask him.

Mr. Rout: Your Honor, I believe this question goes to the heart.

Mr. Nachman: Then I submit the question should be rephrased.

Mr. Rout: Goes to the heart of the issue in this case. I think that the parties, the attorneys realize the problem of medical proof in connection with injuries similar to the one before the Court. In this case the libelant has the burden of proof. I think the period of time which has elapsed, the ability to properly present expert testimony—

Mr. Nachman: Your Honor, I object. This is no place

for speeches. If he wants to get on the stand and talk about how he was prejudiced in getting expert testimony I am perfectly willing for him to take the stand.

The Court: He is arguing in support of his question. Let him argue.

Mr. Rount: I believe that my question goes to the heart of the medical testimony in this case.

The Court: Let me hear the question repeated, please. [122] (The question was read back by the Reporter.)

The Court: Objection overruled. You may cross-examine later.

Mr. Rount: Excuse me. I think the very first phrase of the question in being repeated was not read, and I think on the basis of Dr. Rifkinson's opinion, which you heard, and on your own, and then the question was asked.

(The two questions and answers previously given were thereupon read back by the Reporter.)

A. I don't believe that a person could put a figure to any certainty as to the diagnosis. One can make what you might call an informed guess as to what condition occurred during an injury like that, based on the history alone. It would be very difficult to say that such a guess is so many per cent accurate.

Q. Is there anything else you want to say in answer to that question, Doctor? A. No, sir.

Q. What factors were most important to you in the statement of your opinion? A. As to his diagnosis at the moment?

Q. As to your opinion, what factors do you place most reliance upon? A. My opinion about what?

Q. About libellant's injury of October 21, 1956.

[123] A. Based on the fact that the patient suffered a fall in a sitting position, which is capable of producing a strain in the lumbar region, he had pain in the lumbar region and in the right inguinal region. The history given

to me, he had no other pain. He returned to work within five weeks. Taking those things into consideration and not having access to any physical findings, my impression was that that episode was a lumbar-sacral sprain. I have to take all those things together. You can't take only one item and say that is the crucial finding.

Q. In your opinion can an individual suffer damage or deterioration to his annulus fibrosus without any subjective realization that he has? A. I believe that a person can suffer minor damage to the annulus fibrosus and be unaware that anything has happened at all, without there being any particular pain. I know that fully half of my patients in my private practice who come with symptoms of herniated nucleus pulposus and are subsequently shown to have such a defect can't recall at all any particular injury to the back. Persons who do not do heavy labor and did not perform unusual work at home, they state, well, I just gradually began to have pain, and it gradually increased until it got to this stage. So these persons evidently have suffered a deterioration of the normal consistency of this annulus fibrosus which permits it to bulge from the internal pressure but they have not been aware of any particular moment [124] or incident which one might call a cause.

Q. Now you stated, Doctor, that the libelant in your examination of him told you that the results of the myelogram was positive, is that correct? A. I beg your pardon?

Q. I believe you stated that the libelant told you that the results of a myelogram recently performed was positive? A. That is correct.

Q. Did you examine the State Insurance Fund records in connection with the July 31, 1959 injury of libelant? A. I did.

Q. Did you see any report which indicated the positive finding of a myelogram? A. No. The references to the

myelogram I saw were a report by Dr. Joseph Brinz, who stated the myelogram was negative.

Mr. Rout: No further questions.

Cross-Examination

By Mr. Nachman:

XQ. Would it make any difference to you in diagnosing his present condition whether or not the myelogram was negative or positive? A. No, sir.

XQ. So the fact that the myelogram was negative does not alter your opinion that the man is now suffering from a herniated nucleus pulposus? A. No.

[125] XQ. Did you find any evidence in the record that there were some positive X-rays indicating a herniated disc at L-4, L-5? A. No, sir.

XQ. Did the most recent Back Committee X-Rays indicate— A. I have not seen any report of Back Committee X-Rays.

XQ. Now, Doctor, you stated that it is possible for a person to suffer a herniated disc, or a herniation of the annulus fibrosus without later recalling the exact time of the injury? A. That is correct.

Q. Doctor, is it possible, though, to suffer a herniation or a degeneration of the annulus fibrosus and a consequent herniation of the nucleus pulposus without trauma of some kind? A. I think it is possible in this manner: The annulus fibrosus and the disc, the nucleus pulposus, which make up the intervertebral discs has a very poor blood supply. It is one of the structures of the body which begins to degenerate at the earliest age; because of this poor blood supply it is subject to this early degeneration and this degeneration takes the shape of weakening of the annulus fibrosus, and also changes in the nucleus pulposus. The consistency may change and therefore I believe that explains a great number of these who come to me and

have no recollection of any particular injury. I think they are just persons who have a tendency to—

XQ. If that's occurring within a person's body would he [126] not have multiple herniations of his discs? If this process were going on in a person and they were just degenerating wouldn't they all degenerate or most of them, or some of them? A. Multiple herniations of discs are not rare occurrences.

XQ. But when you have multiple discs do you look for the trauma or a degenerative disease? A. No, you take the history. If there is an injury we make a note of it. If there is no injury that the patient can recall we make a note of that.

XQ. Let me put it another way. When you have a herniated disc do you suspect an injury immediately? A. We do.

XQ. So it is quite common that injuries occur to the disc as a result of trauma? A. As we can determine about fifty per cent.

XQ. And the other fifty per cent you don't know that they don't come from trauma? A. You know that the patient cannot recall any trauma.

XQ. You know that they can't recall trauma of a particular instance, is that correct? A. Of a particular instance.

XQ. Now, Doctor, before you were asked the question which read, "Can you state for us with what degree of certainty a diagnosis can be made as to the accident of 1956." You were asked for a diagnosis of that accident, weren't you? [127] A. Yes, sir.

XQ. Are doctors in the habit and are you in the habit of making a diagnosis on people that you don't see? A. No.

XQ. Or on information elicited by someone else? A. You may be asked opinions as to what the persons may have in presenting such a history and findings and we can give an opinion, what we call a "curb stone consultation."

XQ. Would you say that the information available from the Fondo records as to the history of the 1956 accident were adequate to make a diagnosis? A. There are no physical findings given in that thing so a definite diagnosis could not be rendered.

XQ. So that when you say that there is a lumbosacral strain you are basing it on what is in the record without evidence of physical findings? A. That is correct.

XQ. So that if the physical findings indicated in fact that there was such and such a limitation of the trunk and the straight leg raising on the right was positive or that the right ankle jerks were diminished you would have an entirely different conclusion as to what this man suffered in 1956? A. If some of those things were present, yes. Some of this limitation of forward bending could still be part of the strain.

XQ. It could also be part of a sprain? [128] A. If you did the straight leg raising test after the ankle jerks had been diminished that would be a neurological sign. The others are presumptive signs, of nerve conditions. But they are positive signs.

XQ. Doctor, you assumed that he recovered from whatever injury he suffered in 1956 and this assumption is based solely upon the fact that he went back to work? A. That is correct.

XQ. Without any regard whatsoever to the physical findings or complaints? A. Correct.

XQ. And he has been working off and on in Ponce as a longshoreman? A. Yes, sir.

XQ. And you regard that as heavy work? A. I understand longshoremen's work to be heavy labor.

XQ. Now Doctor, in your opinion is he today qualified to do that kind of work? A. As of this date I would say he should not do that kind of work.

XQ. Didn't you suggest that you would operate upon him when he came to your office? A. I still think that he should become operated on.

XQ. Did you suggest that you would operate on him when he came to your office? A. If he should become my patient I would.

[129] XQ. Would you refer to your report, please, Doctor, and read us the entire history without isolating in the middle the section pertaining to October, 1956? A. There is a correction on the fourth line. Instead of "right calf" it should be "left calf."

XQ. Would you read us the entire history? A. The patient states that he had an accident in 1951 when he slipped, falling in a sitting position with a sack of fertilizer in his hands. He could not get up because of pain in the lower back and right inguinal region. He was hospitalized about four month with back pain in the left calf. He was treated with the diagnosis of sciatica. He finally was given compensation for fifty per cent loss of his physiological functions. Two years later he returned to work as longshoreman. In October, 1956, he again slipped while at work, falling in a sitting position. By the end of the day's work he had intense pain in the low back and right inguinal region. He was hospitalized about eleven days and on November 28, 1956 was given his final discharge to duty. The State Insurance Fund said he had no disability. The patient appealed to the Industrial Commission who confirmed the ruling in a letter to the patient. The patient returned to work as a longshoreman but said he could not work with sacks. He also gave up carpentry work as sawing and planing caused pain in the right hip. He says that his right leg tends to go to sleep. Coughing [130] produces pain in the right lumbo-sacral area but the pain does not radiate. Also he has a more constant pain located in the right calf and Achilles tendon.

On July 31st, 1959 the patient slipped again with aggravation of the symptoms.

XQ. That's enough, Doctor. From this history and the entire picture, can you say with any degree of reasonable medical certainty what role the 1951 accident plays in his present condition? A. In 1951 the patient felt as he did in 1956, landing on his buttocks, having low back pain and pain in the left calf. We don't know the physical findings at that time. From the history alone as in the case of 1956, from the history alone, one suspects sciatica, possibly from a herniated disc at that time. What role that plays in his present condition—

XQ. In his present condition? A. It is possible that that fall weakened one of his intervertebral discs and could have been a contributing factor to further production of pain even on the other side.

XQ. Now, Doctor, didn't you tell us that you read these entire records, the Fondo records, as requested by the attorney for respondents? A. Yes.

XQ. You found no physical findings of the 1951 accident whatsoever, or didn't you make note of them? [131] A. I didn't make a note of them, and I don't recall seeing them.

XQ. You didn't see anything about diminished sensation of the left leg and radiating pain down the left leg and the diagnosis of sciatica in the left leg? A. As I recall one diagnosis that was in that case of lumbo-sacral strain also.

XQ. Yes, the first diagnosis was lumbo-sacral strain in 1951 just as 1956.

Mr. Rout: I would like to request that the file be made available to the Doctor. He might not have had a complete look at it and it wasn't made available for him down at the State Insurance Fund. His memory may not serve him exactly.

The Court: I believe that counsel is looking for the

exact place in the record, and then of course he will have to give it to the Doctor for examination.

By Mr. Nachman:

XQ. Doctor, let me find the report. Excuse me, Doctor. Rather than take up time I will come back to it, if I may, at a recess.

Doctor, in 1951 he had these symptoms. It seemed to clear up according to the history you have taken? A. That is correct.

XQ. He had no more sciatica on the left. Doctor, would you say that this was a proximate cause, this accident of 1951, [132] of his present condition? A. It is possible.

XQ. I am asking you, in your opinion was it? A. Well, I still have to say it is possible, because he still has a little sign that can be related to it, lifting the left leg to sixty degrees he still gets pain in the left ankle.

XQ. Is that a proximate cause in any way of the condition with his right leg? A. Yes, in the sense that they both may be related to the same disc trouble.

XQ. Doctor, between 1951 and 1956, after he returned to work in 1951 he worked without incident and testified here on the stand that the pain gradually left him. Would you say that he had recovered from the 1951 accident? A. Yes, I would.

XQ. Do you agree with what Dr. Rifkinson testified that, if there was a herniation of the left side side in 1951 and a subsequent accident that it would be more likely to rupture in the same spot that it had ruptured before? A. That is the usual thing.

XQ. And isn't it relatively unlikely that a disc at the same level would rupture at a different spot in a subsequent accident? A. Unlikely, you say? It is not as likely.

[133] XQ. Do you agree with Dr. Rifkinson when he said that therefore the 1951 accident in his opinion was not a proximate cause of his present condition which he shows

of a herniated disc on the right side on an entirely new accident because it is at a different level? A. It is possible that it is at a different level, but one cannot demonstrate that, of course.

XQ. No. 1 only asked if you agreed with his premise. A. Repeat it again, please.

XQ. Dr. Rifkinson, as I understood his testimony, said that he was of the opinion that the 1951 accident was in no way a proximate cause of his present condition because the scientific evidence indicated that a rupture at the same level is likely to occur at the same spot as the former rupture. Therefore this accident or this trauma in 1956 or 1959 caused a rupture in a different space, either at the same disc or in a different disc and therefore was unrelated to the 1951 accident.

Mr. Rout: I object to the question on the grounds that he is stating what Dr. Rifkinson testified to, and I think the proper question might be an assumption of facts. But a question as difficult and complicated as that, which is somewhat ambiguous, as I understand it, might be misleading to the witness.

Mr. Nachman: I asked the Doctor, as I understood Dr. [134] Rifkinson's premises, and I think the Doctor is able to answer me whether or not he agrees with the premises as he stated them, or not.

The Court: And he himself heard Dr. Rifkinson. He may correct you and say he didn't hear Dr. Rifkinson say this or that. Objection overruled. A. We agree that a subsequent herniation is most likely to occur at the site of the original herniation, but the injury that produced the original herniation is not at one isolated spot in the disc. The whole disc has undergone a strain. The other side—I would like to point out a little thing on the chart. Running through the spinal column is a very heavy fibrous band, which occupies this space. The thickness of that

band is what makes most of the herniation occur laterally because it would be difficult for them to occur on the band. But any injury producing herniation here has also put a strain on the entire annulus fibrosus which being very thick towards the front withstands the strain fairly well. But toward the rear where it is thinner the strain is not stood as well. So the injury in 1951 not only against the side on which he felt the pain, but the other side also has been strained. I have had patients who tell me spontaneously that last year they had pain on the left side and this year they have pain on the right side. Whether it is the same disc or a different one I cannot tell because not having a myelogram on the patient [135] where one can compare with the present one, one cannot say.

By Mr. Nachman:

XQ. Well, the point is, they had an injury to that disc, to any particular disc, we agree that it is more likely that a subsequent injury will occur at the same place? A. It is more likely.

XQ. Therefore, that the relative mathematical odds are that it is either another disc or a trauma of such sufficiency that it produced a lesion in another part of the disc. Do you agree? A. That it produced further weakening in another part of the same disc, yes.

XQ. Now, Doctor, when you stated in your history that after 1956 he said he could not work with sacks. Would that indicate to you that the 1956 injury was productive of more than a lumbo-sacral strain no matter what it said in the Fondo records of the time of the examination? A. Actually, my history was rather vague at that spot, because I can't recall that when I was taking the history and as I wrote it down and dictated it just when this inability to work with sacks started.

XQ. Doctor, you did say that after 1959 his symptoms

were aggravated. You got that history, didn't you? A. I believe I did.

XQ. So, Doctor, if he aggravated the symptoms he may have [136] had them before 1959 or you wouldn't have written them down that way, would you? A. That is right.

XQ. So after the 1956 accident he had these symptoms of pain in his right leg and he had symptoms of coughing producing pain, and inability to lift sacks. Now having that in mind and isolating the 1956 accident as Mr. Rout has asked you to, adding that to the Fondo records, would you say this is merely a lumbo-sacral strain? A. The subsequent development suggests more a herniation of the nucleus pulposus.

Mr. Nachman: Thank you, Doctor.

XQ. Now, Doctor, how did he describe the 1959 incident? A. As I recall, he was reaching for a sling. I don't know what you call the thing, coming down, and he got off balance, but he caught himself on the ropes of the load. At that time he felt severe pain.

XQ. He didn't have any fall in 1959? A. He did not fall.

XQ. Do you remember the Spanish words that he used as to what happened? A. Sometimes I make notes of Spanish words, but I have only "slipped again."

XQ. Doctor, do you recall whether he used the words "me falsio la pierna"? A. It could be.

[137] XQ. I don't mean to suggest but I am asking if he used the words, because those are on the accident report of the Fondo. Doctor, I want you to assume that while holding onto the sling and making a reaching motion, his leg gave way and he had an aggravation of these symptoms. Would you say in your opinion that the 1956 accident, played no role in this process? A. It could have.

Mr. Nachman: No further questions.

Redirect Examination

By Mr. Rout:

Q. Doctor, do you know of the authority Philip Lewin?

A. I know Dr. Lewin.

Mr. Nachman: I object. I know of no way of substantiating an expert's testimony by the use of textbooks and thereby get textbooks into evidence. I understand the use of textbooks in cross-examination, but there is no way you can get textbooks in evidence into the record by examining your own witness.

The Court: I have read a very recent decision on that, in which they hold very definitely.

Mr. Rout: I haven't offered any textbooks in evidence, whether or not the witness knew Dr. Philip Lewin.

The Court: The witness may in his main testimony say that his findings are supported by the masters of his profession and refer to textbooks and so forth, and then the opposing party may bring the textbooks precisely cited by the expert on [138] cross-examining him to show that he is wrong. But that's all that is permitted.

Mr. Rout: You mean you can use it on direct but you can't use it on redirect? Do I understand Your Honor to say?

The Court: Well I don't believe because the redirect is only to bring up any new matters.

Mr. Rout: That is correct.

The Court: That are the consequence of the cross-examination, but not new matters that were not touched on the cross-examination.

Mr. Rout: That is correct, Your Honor.

The Court: What's the purpose of the question?

Mr. Rout: The purpose of the question is to read to a witness a statement of an expert's opinion, which I would like to ask the Doctor if he agrees with, in respect to diagnosis.

The Court: Then you will be considering the redirect as a cross-examination of the cross, and that's not permitted. That's not the purpose.

Mr. Rout: Counsel on cross-examination raised the issue as to the degree of certainty of the medical opinion and that having been raised on cross-examination it would appear proper to continue that subject on redirect.

Mr. Nachman: Bring Dr. Lewin.

The Court: You don't need to use the book. You can ask the Doctor. The expert witness is brought to the stand because [139] of his expertness, not because of somebody else's expertness.

Mr. Rout: I merely want to ask him whether his opinion coincides.

The Court: He does not have to agree with any opinion. You may ask his own opinion and from the Court's point of view, the Doctor's own opinion is more valuable than any textbook that you may bring.

Mr. Rout: I wanted to ask this witness' opinion.

By Mr. Rout:

Q. Do you agree, Doctor, that an absolute differential diagnosis of a patient immediately after he suffers a back injury may be impossible? A. I agree with that.

Q. Would you tell us what a differential diagnosis is, with respect to back disorders? A. It is a consideration of the various things that might be at hand, the symptoms, history, the findings, and what they mean. Does it mean herniated disc in this case, a lumbo-sacral strain, a fracture? All those things are a differential diagnosis. You try to differentiate between the ones that are and are not.

Mr. Rout: No further questions.

Recross Examination

By Mr. Nachman:

XQ. Doctor, for how long a time is it advisable to wait in order to make a definite diagnosis of an injury to the [140] back?

Mr. Rout: Objection.

Mr. Nachman: On what grounds?

Mr. Rout: It is beyond the scope of the redirect examination.

Mr. Nachman: I merely want to know how long. I am not out of scope.

The Court: The only thing, I believe you shouldn't use the word "definite." You didn't use the word "differential." You used "definite."

Mr. Nachman: I withdraw the question.

By Mr. Nachman:

XQ. For how long should a doctor wait after a back injury in order to make a differential diagnosis? A. You begin considering a differential diagnosis as soon as you see the patient. Sometimes a diagnosis must be established within a matter of hours, if there is a paralysis to the legs you have to make a diagnosis, and use X-rays and lumbar puncture, to know whether you have to operate immediately. In that case the diagnosis must be established in a matter of hours. In other cases, which are minor, and the patient is ambulatory, you may establish the definite diagnosis at the end of a week, two weeks, three weeks, four weeks.

XQ. Sometimes could it run as far as months in order to be sure? A. It depends on the intensity of the symptoms.

[141] XQ. Let's take the case we have here, where a man is seen and we don't know any of the findings at the time of the injury, but that he is seen and he complains of pain in the lumbar back, and according to the records the right inguinal area. He is given bed rest for a period of time,

and massages and then he is discharged as able to go back to work. Then he develops pain in his right leg, finds it difficult to lift sacks, and this goes on for a period of time. Isn't it easier to make a diagnosis after this radiating pain comes into the right leg than it was before?

Mr. Ront: Objection to the question. It is outside the one question that was asked.

The Court: Objection overruled.

A. In a case like that one would have already made a diagnosis before sending the man back to work. The diagnosis could be changed subsequently.

XQ. Would it be possible under those circumstances I have given you that the diagnosis would be changed subsequently? A. I believe it would.

Redirect Examination

By Mr. Ront:

Q. On redirect examination you said it might be impossible to make a differential diagnosis of a back injury immediately after the accident occurred, would you state your opinion after the intervention of four years and two trauma to the back as you know have occurred in this case? [142] A. The occurrence of further injury or strain in this case makes it very difficult to evaluate what role each injury by itself plays in the present condition.

Q. You stated that it may be impossible. Would you state, that with the intervention of four years and two injuries that it becomes more difficult that it would be than if there were no intervening trauma, or such a lapse of time? A. I said what?

Q. You said that it may be impossible to accurately diagnose making a differential diagnosis of an injury to the back. A. Immediately after the injury.

Q. Right now I ask you whether the intervention of four years and two trauma as has occurred in this case would

make it more difficult to diagnose or make it easier to diagnose the result of the earlier injury?

Mr. Nachman: Objection. There are two different questions. Diagnosis and the result of the original injury are two different questions.

Mr. Rout: I will withdraw the question and reword it.

Q. Is it more difficult to diagnose a back injury with the intervention of two trauma to the back and the lapse of four years than it would be to diagnose the back injury immediately after it occurred? Do you understand the question, Doctor? A. After four years one may see subsequent developments [143] which would—I would not make a final diagnosis. One week after the injury the picture may be such that you have a certain diagnosis in mind. A month later it may be different, or it may be the same. If further developments occur spontaneously that you feel could reasonably be related to the injury you might change it still further. If other incidents occur to that back then the picture becomes very difficult and hard to evaluate as to what each injury did to the back.

Mr. Rout: No further questions.

Re-Rocross Examination

By Mr. Nachman:

XQ. Doctor, it isn't difficult to diagnose his condition at present. You have made a definite diagnosis? A. That is correct.

XQ. And you have stated on cross-examination that you would not say that the 1956 occurrence played no role in that condition? A. That is correct.

XQ. As a matter of fact in your report you don't say that it is definitely the result of the 1959 occurrence alone?

Mr. Rout: Objection. This has already been gone into on cross-examination. My redirect was a hypothetical question.

The Court: You were referring your redirect to intervening accidents and the 1959 accident was one of them. The only thing your question was hypothetical and then he comes to the facts.

[144] Mr. Rout: Exactly, Your Honor.

The Court: Well, he has a right to do that. Objection overruled.

By Mr. Nachman:

XQ. Doctor, in your opinion, do you not state that the 1959 occurrence was the cause of his present condition?
A. No.

[146] MARIO RAMIREZ

a witness called by and on behalf of the respondent, after having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Rout:

Q. Please state your full name? [147] A. Mario Ramirez.

Q. Your address, Mr. Ramirez? A. 707 Estancia Street, Caparra Heights.

Q. What is your occupation? A. Chief of operations of the Waterman Steamship Corporation, Puerto Rico.

Q. By whom were you employed on October 21, 1956?
A. By the Waterman Dock Company.

Q. In what capacity? A. As superintendent of docks.

Q. Where were you on October 21, 1956? A. At the Ponce pier.

Q. During what hours? A. I was there from the time the "HASTINGS" moored until it departed.

Q. What was the "SS HASTINGS" doing at that port on that day? A. Loading and unloading general cargo.

Q. Describe in detail what your duties were on that day?

A. To supervise the loading and unloading of the vessel.

Mr. Rout: May I have this marked as an Identification for respondent, please?

The Court: That will be Identification 9 for respondent.

A TIME DISTRIBUTION OF WORK WAS MARKED IDENTIFICATION NINE FOR RESPONDENT.

[148] Q. I show you respondent's Identification 9, and ask you what that is? A. This is a time distribution of work.

Q. For what date? A. Of October 21, 1956.

Q. For what ship? A. For the "SS HASTINGS".

Q. For what hold? A. For Hatch No. 2, forward.

Q. Where did you find that document? A. In the records of the company.

Mr. Rout: I would like to offer respondent's Identification 9 in evidence.

Mr. Nachman: No objection.

The Court: It is admitted and ordered marked Exhibit 9 for respondent.

TIME DISTRIBUTION OF WORK WAS ADMITTED IN EVIDENCE AND MARKED EXHIBIT NINE FOR RESPONDENT.

The Court: Let me see it?

Q. I show you respondent's Exhibit 9, and ask you during what hours on October 21, 1956, from Hatch No. 2 forward, were beans being discharged?

Mr. Nachman: It doesn't say on that document what was being discharged, beans or anything else. It just says that the hold was being worked at a certain time, and I object to [149] to any testimony based on the type of cargo.

The Court: Ask him what this name is, because I believe I see "Porto beans" or something like that.

A. Pinto beans.

Mr. Nachman: What's Riggs?

Q. I withdraw the last question.

Mr. Nachman: I withdraw the objection.

Q. I show you respondent's Exhibit 9, and ask you what

that document contains? A. This show the distribution of the commodities, that is, the class of cargo.

Q. The class of cargo that was being discharged from the hold at the time? A. Yes, that was being discharged from the hold at that time.

Q. Now, would you tell us what that document states as to the various types of cargo, and the hours at which they were being discharged? A. This document says here, "rigging".

Q. During what hours? A. 7:00 to 8:00 A. M. Then it says, discharge of bags of Pinto beans from 8:00 to 11:30. Cartons of canned goods from 11:30 to 12:00, and 1:00 to 3:30. And general cargo, that is different kinds of merchandise from 3:30 to 4:00 in the afternoon.

[150] Mr. Ront: I would like this document marked as Identification 10 for respondent?

Mr. Nachman: No objection.

Q: Please state what respondent's Identification 10 is?

LANDING REPORT WAS MARKED IDENTIFICATION TEN FOR RESPONDENT.

A. This is what we call a landing report, short and damaged.

Q. For what period of time does that report pertain?

A. From the time the unloading operations of the "Hastings" commenced until they terminated.

Q. Does that include October 21, 1956? A. Yes, sir.

Q. Where did you get that document from? A. From the company's files.

Mr. Ront: I would like to offer Identification 10 in evidence.

The Court: Since there is no objection, it is admitted and ordered marked respondent's Exhibit 10.

LANDING REPORT WAS ADMITTED IN EVIDENCE AND MARKED EXHIBIT TEN FOR RESPONDENT.

The Court: I want to see that.

Q. I show you respondent's Exhibit 10, and ask you by whom it is prepared? A. That was prepared during that period by an employee who leaves San Juan aboard the ship, and would go to each of [151] the ports where the ship was unloading.

Q. And prior to the preparation of this report, what does that individual do? A. He arrives at a port with the ship; the hatches are immediately opened, he inspects all of the cargo and everything that he finds broken like sacks or broken cartons, he goes around in the company of a cooper and he immediately orders that the bags be sewed again, and repaired before being discharged.

Q. Does that report contain an entry with respect to cargo in No. 2 hold of the "SS HASTINGS" on October 21, 1956? A. Yes, sir.

Q. Would you please read that portion of the report which pertains to cargo of beans in the No. 2 hold? A. KB - 1763, Ponce, that's the mark. 4 bags of pinto beans found torn and short in weight. 11 bags of pink beans found torn and short in weight at the time of discharging. Do you want me to read everything in connection with No. 2?

Q. Just in connection with the cargo of beans?

Mr. Rout: I would like to have this document marked Identification 11 for respondent.

PAYROLL FOR UNLOADING OPERATIONS WAS MARKED IDENTIFICATION ELEVEN FOR RESPONDENT.

The Court: Are you going to use this gentleman as a witness? You must put him under the rules.

[152] Mr. Santiago: He is a doctor from the Fondo.

The Court: If he is a doctor, that's all right.

Q. I show you respondent's Identification 11, and ask you what that is? A. That is the company payroll.

Q. Where did you get that from? A. From the company's files.

Q. I now offer respondent's Identification 11 in evidence.
Mr. Nachman: /No objection.

The Court: It is admitted and ordered marked Exhibit 11 for the respondent.

PAYROLL FOR UNLOADING OF "HASTINGS" WAS ADMITTED
IN EVIDENCE AND MARKED EXHIBIT ELEVEN FOR RESPOND-
ENT.

The Court: Let me see it. You mean this is the payroll for all the unloading operations of the "HASTINGS"?

Mr. Rout: No, Your Honor, this is just one sheet which was extracted from the payroll.

The Court: Then that's a portion of the payroll?

A. Yes, sir.

Q. I show you respondent's Exhibit 11. Would you state for us again what that is? A. It is a page of the payroll.

Q. Would you state for us what the duties of a cooper are? A. To repair all broken cargo, sew up bags.

Q. Does that document indicate how many coopers were [153] employed that day? And if so, how many were there? A. There were four aboard, and two ashore.

Q. And during what hours did these coopers work, according to the payroll? A. They worked from 7:00 to 4:00 aboard the ship; and from 4:00 to 6:00, and 7:00 to 12:00 at night, during the day.

Q. And what day is that payroll for? A. 21 October 1956.

Q. In connection with discharge of cargo from the "SS HASTINGS"? A. Yes, sir.

Q. Would you please state whose duty it is to keep the dock clean, while cargo is being unloaded from the vessel? A. The stevedoring company. The Waterman Dock Company.

Cross Examination

By Mr. Nachman:

XQ. Mr. Ramirez, did you have a part in preparing any of these records? A. No, sir.

XQ. And these records are just records kept by somebody in the regular course of business? A. Yes, sir.

XQ. Now, you don't know to your own knowledge, then, whether there were four coopers aboard? A. The practice is always to have coopers aboard the ship.

[154] XQ. That's not my question. You don't have any independent recollection whether on this day there were coopers? A. There were coopers aboard.

XQ. Did you see them? A. Yes, sir.

XQ. Were all five hatches being worked? A. Since it was so long ago, I don't recollect whether all five hatches were working.

XQ. But there are records to indicate this too? A. Yes, there are.

XQ. What do the coopers do with the sacks that are torn? A. They repair them.

XQ. Are all of them repaired before the cargo leaves the hold? A. If it is noted that they are torn, they are repaired.

XQ. I show you respondent's Exhibit 10. I show you this item here in Hold No. 1, and would you translate this item right here? Can you read what that is? A. Yes, sir.

XQ. What does that item say? A. I bag pink beans fell from pallet of about 35 feet high to dock floor completely broken and contents scattered.

XQ. That means that the bag fell in Ponce, is that correct? A. That's right.

XQ. And the coopers couldn't repair that aboard the ship, could they? [155] A. They could not, because it fell off of the pallet.

XQ. Now how many of these coopers were devoted to

sewing? A. Well, they have the duty of repairing boxes and sewing bags. They have no specific duty.

XQ. They all can sew? They all can repair? A. Yes, sir.

XQ. Where do they stay when they do this? A. They walk back and forth all over the vessel in the company of this gentleman who makes that report—that is, the aboard-ship coopers.

XQ. Well, you also have coopers ashore? A. Yes, sir.

XQ. And they take care of the stuff that the coopers aboard aren't able to do before the stuff is unloaded, is that correct? A. Exactly.

XQ. So that when you started working on this hatch, and started unloading beans at 8:00 in the morning, if you couldn't take care of all the broken bags the boys ashore would take care of them? Is that correct? A. No, sir.

XQ. Why not? A. Because there is an order that every bag that is torn in the hold of a ship, in the stow of a ship, is to be placed to one side so that this gentleman can make a note of it, and [156] then the coopers fix it up as they do with the rest of the cargo.

XQ. Then will you explain to me, sir, why the notations that they were found torn at the time of discharging, rather than before discharging? I refer you to this note? A. At the moment of discharge. The discharge includes the moment when the bag is placed on to the stow.

XQ. Who makes this notation that they were found torn? A. This gentleman.

XQ. And he can't take care of all the hatches at that time? A. At that time, and now the foremen have instructions that they should take each torn bag and place it to one side.

XQ. But you have no knowledge whether or not these instructions were carried out to the letter, do you? A. No, I don't remember.

XQ. And you don't know of your own memory, do you,

whether or not there were beans or other produce on the dock that day? A. I don't remember.

XQ. Are you familiar with the making out of the payroll? A. Yes, sir.

XQ. And is it a requirement of the company to put down the Social Security number of every worker? A. Yes, sir.

Mr. Nachman: I call upon the respondent to produce the [157] entire payroll record. I offer the entire payroll record in evidence. Any objection?

Mr. Rout: No objection.

The Court: It is admitted and ordered marked Exhibit 2 for libelant.

PAYROLL RECORD WAS ADMITTED IN EVIDENCE AND MARKED EXHIBIT TWO FOR LIBELANT.

XQ. Now, Mr. Ramirez, do you know how many people were aboard this ship on this day, working for the Waterman Dock Company? A. I don't remember how many gangs there really were. I would have to consult the records.

XQ. I take it that these records are just for the 7:00 to 4:00 shift, is that correct? A. I would have to see them to answer that.

XQ. No, there are some here that go to 11:00 P. M., but I show you these records and ask you if you can estimate how many workers there are in these pages?

Mr. Rout: Your Honor, I object. The document is in evidence. I think the document speaks for itself. It contains the number of people in the payroll.

Mr. Nachman: I am perfectly willing. We will do it this way.

XQ. On this page in hatch No. 1, Mr. Ramirez, it shows 13 men working in the hold from 7:00 to 4:00 P. M.? Would that [158] be correct? A. Yes, sir.

XQ. And it shows two tackermen? Would that be correct? A. Yes.

XQ. And it shows 12 men ashore? I take it they are moving and stacking this cargo? A. Yes.

XQ. In No. 2 forward, it shows 11 men? A. Yes.

XQ. And two tackermen? A. Yes.

XQ. 11 men ashore? A. Yes.

XQ. Then in hold No. 2 aft, it shows 11 men in the hold? A. Yes, sir.

XQ. Two tackermen? A. Yes, sir.

Q. 12 men ashore? A. Yes, sir.

XQ. Also from 7:00 to 4:00 P.M., in hold No. 3 forward?

Mr. Rout: I object to the line of questioning. It seems to be outside the scope of the direct examination.

Mr. Nachman: These records were introduced by him. I can question these records.

Mr. Rout: It is irrelevant for the purpose of my direct [159] examination. If Mr. Nachman wants to make this man his witness, he can do so.

The Court: Objection overruled.

XQ. No. 3 forward, 11 men in the hold? A. Yes.

XQ. Two tackermen, and 12 men ashore? That's also 7:00 to 4:00 P. M.? A. Yes.

XQ. In hold No. 3 aft, it had also worked 7:00-4:00 P. M. and had 11 men in the hold? A. Yes.

XQ. Two tackermen and 8 men ashore? A. Yes, sir.

XQ. Hold No. 4 forward had 15 men in the hold? A. Yes, sir.

XQ. That's also 7:00 to 4:00 P. M. Hold No. 4 aft had 15 men aboard? A. Yes, sir.

XQ. Two tackermen and 8 men ashore, also 7:00 to 4:00 P. M.? A. Yes, sir.

XQ. Hold No. 5 and 11 men inside the hold; two tackermen and 8 men ashore? A. Yes, sir.

XQ. Now, this is 4:00 to 12:00; this is 4:00 to 6:00; this

is 4:00 to 6:00; this is 4:00 to 12:00; 4:00 to 12:00; [160] 4:00 to 12:00. Now in addition to all those men, there were 10 men cleaning aboard? A. Yes, sir.

XQ. And there were 10 men ashore stacking and classifying cargo? A. Yes, sir.

XQ. This is 4:00 to 12:00; and this is the morning shift, and this is the morning shift. And you also in addition to this, had both aboard and ashore, 9 foremen aboard and 5 foremen ashore? And a chief foreman? A. Yes, sir.

XQ. And in addition to that, you also had water-carriers, coopers, and motormen? A. That's right.

XQ. All those men were working aboard the ship between 7:00 and 4:00? A. Aboard and ashore.

XQ. I ask you, Mr. Ramirez, to look at these records and see if you find anywhere the Social Security numbers are not attached? A. Yes, there is Social Security here.

XQ. On all of them? A. There is one here without any Social Security, Abraham Hernandez.

XQ. Are there any others? [161] A. Here's another who is a foreman, Eusebio Mercado Perez. There are two more here who are coopers, Ruben Retamar and Domingo Medina.

Mr. Rout: Objection again. I question the relevance.

Mr. Nachman: I can question the weight of any evidence that has been in evidence, and if I am questioning it because the two coopers don't have Social Security, or there is one man and one formen who don't have the Social Security, I can question it.

Mr. Santiago: Are you attacking the evidence which is presented by you?

The Court: It is obtained from the respondents.

Mr. Nachman: I don't care who it is presented by.

The Court: Objection overruled.

XQ. So, although there were four coopers aboard, two

of them have no Social Security numbers? A. Well, there were four coopers.

XQ. You can only say there were four coopers, based on these time sheets? A. Yes, sir.

XQ. You don't know when this time sheet was prepared, do you? A. Yes.

XQ. When was it prepared? A. Immediately after the ship terminates the unloading, [162] in order to pay the workers.

XQ. Did you have any hand in the preparation of this? A. Well, after the ship is finished, I check it to see that the number of workers is in agreement with the number who were to be employed, that were ordered.

XQ. And do you recall whether Ruben Retamar and Domingo Medina were aboard? A. Yes, they were aboard.

XQ. And why aren't their Social Security numbers attached? A. Many times they don't have their Social Security number on them, and the time keeper remembers it and writes it down. And the timekeeper can't write it down, because he does not have the number.

XQ. This is your final payroll, is that correct? A. Yes, sir.

XQ. How do you withhold for Social Security for these two men? A. I don't know, because the company accepts it in this form and that's all I know about it. That was in 1956.

XQ. One other thing. Looking at these records, sir, can you tell me first of all, what is a tackerman? A. A man who works on the apron. The man who receives the draft on the pier.

XQ. Would you tell me, please, who were the tackermen on hold No. 1, from 7:00 to 4:00? [163] A. According to this record, Felipe A. Roman and Ramon Cerna Martinez.

XQ. Those records you have had ever since October 1956, have you not? A. The company has them in its files.

XQ. And they have never left the files of the company?

A. I can't tell you whether they have left or not.

XQ. Where did you get them? A. I asked the company auditor for them.

XQ. And he had them in his possession? A. Yes, sir.

XQ. They are kept in the regular course of the company's business, aren't they? A. Yes.

XQ. So that if anybody representing the company, or any other company wished to find out who the tackermen were in hold No. 1, and whether in fact they were working on that day, you have that evidence, do you not?

The Court: I believe you are arguing with the witness.

Mr. Nachman: I am not arguing with the witness. I want to know if the records were there?

The Court: The presumption was that the records were kept. Unless evidence to the contrary is offered, they were available to everybody, including the company. It is a matter for the record. I know all these questions are for the purpose [164] of the defense of laches.

Mr. Nachman: Yes, sir.

XQ. Would you please tell us, who were the tackermen in Hold No. 2?

Mr. Rout: On that very respect, I renew my objection once again. If he would like to call this witness as his own, I think he can do so.

Mr. Nachman: I am perfectly willing to make him my own witness for this purpose.

A. According to these records, Carmelo Fraticelli and Federico Marin Gutierrez.

XQ. Do you know Federico Marin Gutierrez? A. Well, by sight.

XQ. Do you see him here in the Court room? A. That man over there.

The Court: Let the record show that he is pointing to the libellant.

XQ. Please tell me who were the tackerman in Hold No. 2 aft? A. In accordance with this record, Alberto Anaviteto and Manuel Quirindongo Centron.

Mr. Nachman: No further questions.

(The witness was excused.)

Mr. Rout: To facilitate the testimony of Dr. Bayonet, I would like to request a recess at this time to enable the [165] doctor to review the State Insurance Fund records, as he has requested to do so.

The Court: Will ten minutes recess be enough?

Mr. Rout: Will that be enough to examine? Yes, that will be enough.

The Court: Because I don't want to continue this case until tomorrow.

NATALIO BAYONET JIMENEZ

a witness called by and on behalf of the respondent, after having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Rout::

Q. Please state your full name? A. Natalio Bayonet Jimenez.

Q. Your address, please? A. Hermanas Davila, First Street, Bayamon.

Q. What is your occupation? A. I am a physician and surgeon.

Q. By whom are you employed, Doctor? A. By the State Insurance Fund of Puerto Rico.

Q. Do you know the libellant in this case? A. I know him. [166] Q. Would you point to him please? A. He is sitting over there.

The Court: Let the record show that the Doctor points to the libellant.

Q. What are your duties, Doctor, in connection with

your employment by the State Insurance Fund? A. I am the medical director in charge of all the medical services of the State Insurance Fund.

Q. And what are the duties of the medical director? A. To coordinate all the medical services and give medical assistance to men injured at work, that report to the State Fund, provide all medical assistance including hospitalization, out-patient, and furnishing of specialists and special medicines and hospitalization for these injured workmen.

Q. Do you have anything to do with the fixing of disabilities of injured workmen? A. I also have to intervene in the fixing of certain disabilities by the State Insurance Fund.

Q. Did you examine the records of the State Insurance Fund which pertain to the injuries of the libelant in this case in 1951 and 1956? A. Yes, sir, I did.

Q. In your opinion, Doctor, did the libelant suffer permanent disability as a result of his injury of 1956?

Mr. Nachman: I object, Your Honor.

[167] The Court: I believe that is such a general question.

Mr. Rout: I will withdraw the question at this time, Your Honor. Did you intervene, Doctor, in connection with the accidents of the libelant in 1951 and 1956?

Mr. Nachman: I object, unless I know in which capacity the Doctor intervened, since he has several capacities, doctor, medical director, and administrator, and fixing of compensation awards.

The Court: You may cross examine on that. Objection overruled.

Q. You may answer the question, Doctor? A. I had to examine the patient in 1951 after he had been discharged from treatment, to evaluate if there was any residual disability from the accident he suffered.

Q. And what were your findings in that examination?

A. According to the records, I signed a report together with Dr. Pinero who was my assistant, and examined the patient, and decided that he had a 50 percent disability—

Mr. Nachman: I object, and move that the last portion of that answer be stricken, inasmuch as it is a basis for an award of compensation under a different statute entirely. And it is not responsive to the question.

Mr. Rout: We submit the Doctor stated he examined the patient, and intervened in his capacity as medical director, and he is merely stating his conclusions.

[168] The Court: But his conclusions for the purpose of evaluating any disability, pursuant to the Workmen's Compensation Act has no bearing on this case, so that portion of the answer in which he says about evaluating should be ordered stricken. That does not mean that the Doctor, as a professional, may not say what he noticed in the physical state of libellant at the time of discharge.

Q. Doctor, will you please state the physical condition of libellant at the time you fixed the disability, and upon which the disability was based?

Mr. Nachman: Objection to the form of the question.

The Court: Objection sustained. Forget the disability; in his official capacity.

Mr. Rout: I submit, Your Honor, that although the finding of the State Insurance Fund under the Workmen's Compensation Law isn't binding on this Court, or isn't conclusive in any way, it would appear this has inferential relevance to the physical condition he found the man in, and it is impossible in his function as a medical director to necessarily separate what his findings were, as distinguished from his physical condition.

The Court: I believe he can. What he notices in the physical state of a patient, this type of injury, he is in this and this way, and that's that. Now, for the purposes

of the State Insurance Fund he has to follow certain rules in [169] order to evaluate that, and that's not admissible here. We had the other day, the case of Dr. Fernandez testifying that a certain disability, although medically this disability was so much, for the purposes of the insurance Fund it was only 30 percent, 40 percent, 50 percent.

Mr. Rout: I will re-word the question, but it would appear to me that irrespective of the exact standard used in fixing disability, there is some connection between the disability—

The Court: The relevance is the actual physical disability that he found. That is what concerns the Court.

Q: Please state the physical disability that you found in 1951? A. The patient was complaining of severe back pain, radiating along the sciatic nerve, and he had a limitation of the movements of the trunk. This was compatible with a diagnosis of a herniated disc.

Q. Doctor, you stated that you reviewed the record of the Fondo in 1956, is that correct? A. I reviewed the record in connection with the 1956 injury, yes.

Q. Did libelant suffer a permanent disability as a result of the 1956 injury?

Mr. Nachman: I object. There is no foundation whatsoever laid for the direct testimony—

The Court: Unless you qualify the question, I am going to [170] sustain the objection. You may ask the same question, what disability did he find in the body of the libelant after the 1956 accident, if any?

Q. What permanent disability, if any, did libelant suffer from?

Mr. Nachman: I object, the same reason.

Mr. Rout: I haven't finished.

Q. On the basis of your examination of 1956 records?

Mr. Nachman: I object. There is no testimony that the

Doctor examined this man in 1956. The record speaks for itself.

Mr. Ront: The record isn't in evidence.

Mr. Nachman: Whatever portion of the record that is here—you have already had the doctors who examined the libelant in 1956 testify, and this doctor is not qualified to testify as to that.

Q. Did you examine the man in 1956? A. It does not appear in the record that I did.

Q. Do you want to review that record one more time?

A. This man was examined, according to this record, by Dr. Eduardo Gonzalez. He was a medical inspector on my staff.

Q. What does that record indicate, Doctor?

Mr. Nachman: I object, Your Honor.

The Court: What's the question?

(The question was read back by the Reporter.)

[171] Mr. Nachman: This is a medical examination for purposes of fixing an award, isn't that right, Doctor?

Mr. Ront: Just a moment, please?

The Court: Is that record in evidence?

Mr. Ront: No, Your Honor.

The Court: Then I can't permit you to ask any question as to what the record shows, unless it is in evidence.

Mr. Ront: Does this record have a signature on it? A. It does.

Mr. Ront: I would like to have this document marked as Identification 12 for respondent.

The Court: It is Identification 12 for respondent.

A MEDICAL RECORD OF THE STATE FUND WAS MARKED IDENTIFICATION 12 FOR RESPONDENTS.

The Court: If you are going to continue to examine this witness, we will have a recess and continue this afternoon.

Mr. Ront: I would be finished with him probably in about 10 minutes.

The Court: You know, I told you before I was going to work until 12:00, whether it is more convenient to recess until 2:00. You take 10 minutes, and then he will take 15 minutes more.

Mr. Nachman: I am not going to take anything, Your Honor.

The Court: All right, go ahead.

Mr. Rout: I now offer respondent's Identification 12 [172] in evidence.

Mr. Nachman: I object, Your Honor.

The Court: Objection sustained. That document does not amount to anything, as regards evidence of the physical condition of this libellant.

Mr. Rout: Your Honor, it is submitted that—

The Court: This Doctor is generally saying something without any basis whatsoever, and then making reference to his previous accident, and his previous incapacity, and saying that simply he is applying the Workmen's Compensation Act, whereas regarding a case like this, it serves no purpose.

Mr. Rout: This examination says in part that there was no incapacity found.

Mr. Nachman: I object.

The Court: You can not read that in the record.

Mr. Rout: It is in connection with the medical report, and it includes not only the language of the compensation awards, which seem to be so offensive, but that it also includes a medical examination which is a part of the State Insurance Fund record and the bases upon which Dr. Bayonet's department acted. There are other documents in that record also.

The Court: Perhaps under the shop book rule, this is admissible.

Mr. Nachman: There is no evidence that there was a medical examination there.

[173] The Court: He said that the libelant was examined today.

Mr. Nachman: But there is no report of any examination. This is only for purposes of evaluation.

The Court: Well, that would be the weight to be given to that. Objection overruled. The document is admitted and ordered marked Exhibit 12 for respondent.

MEDICAL RECORD OF STATE INSURANCE FUND WAS ADMITTED IN EVIDENCE AND MARKED EXHIBIT 12 FOR RESPONDENT.

Mr. Rout: Aside from Exhibit 12, I show you the State Insurance Fund record of 1956. Does that record show any report of a medical examination?

The Court: Is this document in evidence? You better mark it for identification, and ask him what it is.

Mr. Nachman: I object to the entire State Insurance Fund file. We are dealing with shop book records only as to medical treatment and hospital records.

Mr. Rout: It is apparent that proctor for libelant is trying to restrict the presentation of evidence with respect to medical examinations of this man at the time he was injured. I think there is nothing more relevant to this case than that. We have had medical testimony four years and two accidents afterwards, and it would seem medical examinations of this man and official records in a government agency—

The Court: Yes, medical records, so that all portions are not material to the case. You offer everything you have [174] as to examinations.

Mr. Rout: I would like to ask the witness if he finds a medical examination in this file. Is there any objection to that?

Mr. Nachman: No.

The Court: Of course, that's something that should have been done while we were in recess.

Q. Does that document, besides Exhibit 12, contain any

other report of a medical examination of the libellant?

A. There is a decision of the Industrial Commission which is subscribed by the medical inspector of the State Insurance Fund, and the medical—

Q. Does that decision contain a report of a medical examination? A. It does.

Q. Are there any other reports of medical examinations?

A. Yes, there is another one on the 26th of November in Ponce, by Dr. Iguina.

Mr. Ront: I would like to have these two documents marked.

The Court: Mark them as Identification 13 and Identification 14, only the portions that are offered.

REPORT OF DR. IGUINA WAS MARKED IDENTIFICATION 13 FOR RESPONDENT.

REPORT OF INDUSTRIAL COMMISSION WAS MARKED IDENTIFICATION 14 FOR RESPONDENT.

[175] Mr. Nachman: I object to both. Your Honor already ruled Exhibit 13 inadmissible when Dr. Iguina was here. And I object to Identification 14 because it is an administrative finding based upon the compensation system of the State Insurance Fund.

The Court: This was rejected?

Mr. Ront: Apparently it was, Your Honor. I didn't realize it was the same one that was offered when Dr. Iguina was here.

The Court: And this is the other one?

Mr. Ront: Yes, sir.

The Court: You are offering them in evidence?

Mr. Ront: Yes, I am.

The Court: Objection sustained as to both.

Q. On the basis of the medical examinations, Doctor, which you found in a study of the 1956 record, what was the conclusion which the examining doctors came to with respect to libellant's disability of 1956?

Mr. Nachman: I object, Your Honor.

The Court: It is hearsay. He says he has never examined this libelant.

Mr. Rout: These are the official medical records of the State Insurance Fund. They have to come to a conclusion.

The Court: Are they in evidence? If they are in evidence I grant an expert could be shown those documents in evidence [176] and state his own conclusions, but if they are not in evidence you are asking the Court to permit the witness to refer to documents which have been rejected by the Court. Objection sustained.

Q. Doctor, you reviewed the 1956 record of the State Insurance Fund, is that correct? A. Yes.

Q. If you will assume that Dr. Iguina had come to this court room and stated that in his opinion that the libelant suffered no permanent disability as a result of his 1956 accident, would you agree with that, professionally?

Mr. Nachman: I object to that, Your Honor.

The Court: Objection sustained.

Mr. Rout: Your Honor, I would like to re-submit that question and support it with argument, if I may.

The Court: Do you want to wait until 2:00? I will recess until then.

Mr. Rout: All right, Your Honor, I would appreciate that.

The Court: All right. We will take a recess until 2:00. (The noon recess was then taken.)

The trial was resumed at 2:00 in the afternoon, all parties and their counsel being present as before.

Direct Examination of Dr. Bayonet Continued

[177] By Mr. Rout:

Mr. Rout: I would like to have this document marked for identification.

The Court: That will be Identification 15 for respondent.

SPECIAL MEDICAL REPORT WAS MARKED IDENTIFICATION 15 FOR RESPONDENT.

Q. Doctor, you stated you examined the libelant in 1951, did you not? Is that correct? A. I did.

Q. I show you respondent's Identification 15, and ask you that this is? A. This is a special medical report signed by myself and Dr. Pinero.

Q. Does it contain physical findings and a diagnosis of libelant's injuries? A. It does.

Mr. Rout: I would like to offer respondent's Identification 15 in evidence.

Mr. Nachman: Your Honor, I have no objection to the first 2 paragraphs, or the next to the last paragraph of this document. The third paragraph I submit is inadmissible because it contains something other than a medical finding. I have no objection to the other portions being read into the evidence.

The Court: You object to the 3rd paragraph?

Mr. Nachman: Yes, Your Honor.

[178] Mr. Rout: I will withdraw so much of that document, Your Honor, as pertains to the—

The Court: To the incapacity? All right, it is admitted with that limitation, on condition that a translation into English accompany it.

SPECIAL MEDICAL REPORT WAS ADMITTED IN EVIDENCE WITH LIMITATION, AND MARKED EXHIBIT 15 FOR RESPONDENT.

Q. Would you please read into the record the physical findings and the diagnosis contained in that medical report?

The Court: Why is that necessary, if the document is in evidence all the doctor would do is to repeat what the document says.

Q. What was the medical conclusion that you came to on the basis of your findings and diagnoses? A. That this

man was disabled on account of physical findings pertaining to a herniated disc.

Q. Now, Doctor, you examined the State Insurance Fund record in connection with the 1956 injury, is that correct?

A. Yes, sir.

Q. And did that State Insurance Fund record contain reports of a medical examination? A. It has two reports pertaining to medical examinations.

Q. Did those medical reports contain diagnoses of libelant's 1956 injury? A. It implies a diagnosis.

[179] Q. Would you please tell us what that diagnosis was?

Mr. Nachman: I object, Your Honor, to the implication.

The Court: Objection sustained. The best evidence would be the certificate of the doctor.

Q. Would you please find the medical reports which contain the diagnosis of libelant's 1956 injury? A. There is a report of the Industrial Commission doctors.

Mr. Nachman: I object. This isn't in evidence.

A.—identified as Number 14.

Mr. Nachman: This document was rejected in evidence, Your Honor.

The Court: You cannot show the contents of the document, that is, Identification 14, which was already rejected.

Mr. Rout: At this time I would like to submit to the Court that the witness, in his professional capacity, has stated that there are medical records in the State Insurance Fund file, and that those medical records contain a diagnosis of the 1956 injury of the libelant, and on that basis and on that identification of documents by the witness himself, in his professional capacity, it is re-submitted at this time, in view of those facts.

Mr. Nachman: Your Honor, they had the best evidence here, Dr. Iguina, who made the diagnosis and examined libelant.

Mr. Rout: If this is cumulative evidence, it will be withdrawn on the basis that this witness would only say what Dr. [180] Iguina would say. This report wasn't prepared by Dr. Iguina.

Mr. Nachman: This report isn't admissible under any circumstances. It is an examination made solely for the purposes of a medical award.

Mr. Rout: It is a medical examination, in any case.

The Court: You see, in the first place, there are no medical findings here. It is simply that the doctors said they examined the record, the "expediente" the file with relation to the claim that was denied by the Fondo del Seguro del Estado, the State Insurance Fund, and they don't find any aggravation from that file. I don't think they are medical findings.

Mr. Rout: Your Honor, it is submitted that there was an examination by these doctors of other physical findings which are now in evidence, and on the basis of their own examination of the libelant and their own examination of previous files which are on record they are making a statement as to the medical condition of the libelant, and it would seem that that chain of circumstances establishes the validity also for the diagnosis of the injury to libelant.

The Court: Objection sustained.

Q. Doctor, you stated that you examined the medical records in the 1956 file, is that correct? A. Yes, sir.

Q. And you examined the diagnosis contained therein? A. Yes, sir.

[181] Q. And you also examined the libelant in 1951, and made certain physical findings? A. Yes, sir.

Q. Will you please state, if, in your opinion, libelant suffered a permanent injury as a result of the 1956 injury?

Mr. Nachman: Objection.

The Court: Objection sustained.

Mr. Rout: No further questions.

Cross examination

By Mr. Nachman:

XQ. Doctor, when you examined the patient in 1951, the original diagnosis was lumbar sprain, is that correct?

A. Originally it was lumbar sprain.

XQ. And after a period of time that was changed to herniated disc, is that correct? A. Yes, sir.

XQ. What period elapsed between the original diagnosis of lumbar sprain and the final diagnosis of herniated disc? A. I can not tell you off-hand, but if I can examine the record perhaps I can get an idea. In March there is a medical report by Dr. Sheplan, an orthopedic surgeon, where he believes there was some low back pathology, and that's when—and there is a physical examination later, Dr. Sheplan suggested that he be seen by a neuro-surgeon, and he was seen by Dr. Richardo Cordero, who found the possibility of the [182] patient having a herniated disc. It was more or less the middle of March.

XQ. That was three months after the accident? A. Roughly about three months after the accident.

XQ. So to make a diagnosis on a disc depends on symptoms that develop after the original trauma? A. That is true.

XQ. When you evaluated that 1951 case, you stated on direct examination that there was diagnosis of sciatica that led you to this diagnosis of a herniated disc? A. Yes, sir.

XQ. On which side was that sciatica, Doctor? A. It was on the left side.

XQ. And since you made that evaluation in 1951, you have not medically examined this patient at all? Since June 1951, you have not examined this person at all? A. I don't recall examining him at all.

XQ. And you have no personal knowledge about his present condition, or about anything that happened to him?

after you authorized his return to work in 1951? A. No, I don't.

Mr. Nachman: No further questions. Excuse me, I do have another question.

XQ. May I see Exhibit 12, please? Doctor, would you explain to me please the second sentence of Exhibit 12? [183] A. This is a special medical report signed by Dr. EdUARdo Gonzalez.

XQ. What does the second sentence of that report mean? A. It says he was examined on November 27, 1956, and was found recovered and without disability of the accident of October 21, 1956. And that the limitation of function does not represent more than 50 percent of the general functions.

XQ. In other words, when he said, if I understand correctly the State Insurance Fund terminology, when it says he recovered without incapacity, the second sentence explains that the incapacity is no greater than that for which he had already been given an award some five years earlier? A. What it really means is that he didn't acquire any additional disability from the second injury of 1956, above 50 percent.

XQ. In other words, if he got better, after he went back to work in 1951, and his condition had improved up to the time of the accident in 1956, so he was no longer a 50 percent disabled person, then the 1956 accident didn't make him any worse than he was after the date of the award of 1951? A. That could be a possibility.

Mr. Nachman: Thank you, Doctor.

The Court: Any further questions to the Doctor? On re-direct?

Mr. Rout: Just one last question, Your Honor.

[184]

Redirect Examination

By Mr. Ront:

Q. Is it also a possibility, Doctor, that that report means that he returned to the condition he was in immediately prior to the injury of October 21, 1956? A. That is another possibility.

Mr. Nachman: Doctor, there are no physical findings in this report, are there? There are no physical findings in this report? It is just a conclusion that he is cured without incapacity, there is no physical findings as to limitation or anything else? A. It does not say so, but he had to evaluate that before he could emit that opinion.

Mr. Nachman: But you don't know what those findings were? A. As far as I understand this report—

Mr. Nachman: No, Doctor, you don't know what the findings were?

Mr. Ront: Objection. The Doctor is in the middle of answering the question.

A. I could answer that, but I will have to explain.

Mr. Nachman: Go ahead.

A. He does not say so, but when he is referring to the 1951 accident, I know that those are the findings he is trying to express here. Otherwise he couldn't refer to that accident.

[185] Mr. Nachman: But his actual words are, the only physical findings that he makes are that the limitation of function is no greater than 50 percent? That's the only physical finding in this whole report, isn't that correct?

A. No, there is opinion.

Mr. Nachman: I am not talking about the award of incapacity, that isn't a medical finding at all? A. It is in a sense. You cannot evaluate disability unless you make an examination.

RESPONDENT'S EXHIBIT NO. 4

GOVERNMENT OF PUERTO RICO
 STATE INSURANCE FUND
 MEDICAL DIVISION
 San Juan, P. R.

ORDER FOR X-RAY EXAMINATION

Injured worker: Federico Marin
 Employer: Waterman Dock Company
 Case No.:
 Date of Accident: 10/21/56
 Date of Order: 10/22/56

Age: 49

Dr. William Gelpi
 Ponce, Puerto Rico

Anatomical Region: Lumber to (illegible) vertebrae

Clinical Summary: He claims that upon trying to hold a draft he slipped falling in a seated position on the pavement feeling pain in the hips, his waist and the inguinal region on both sides.

Upon examination there is no external evidence of trauma in the lumbar region.

DR. JOSE DEL PRADO
 Medical Officer

X-RAY REPORT

10/12/56

Date

45. Slight osteo-arthritic changes in fifth lumber
 Negative for (illegible)

DR. (illegible)
 Radiologist

RESPONDENT'S EXHIBIT NO. 6

COMMONWEALTH OF PUERTO RICO

STATE INSURANCE FUND

San Juan, Puerto Rico

Employer: Fill in immediately upon occurrence
of the accident and hand to injured worker.

Case No.

Policy No. 63525

Key 3749 Group 372

Daily Wage 8.005

Weekly Comp. 24

Part of the Body

Nature of Lesion

READ INSTRUCTIONS ON THE BACK.

REPORT OF ACCIDENT AT WORK

A EMPLOYER

1. Name of Employer Brown & Root Caribe Inc.
2. Postal Address Box 1990, Ponce, P. R.
3. Kind of business Engineer's Constructor
4. Place of Business
Tallaboa, Pennuelas, Puerto Rico
5. Indicate the product or principal article harvested or manufactured or the service rendered by the business Construction

B INJURED WORKER

6. Name of injured worker
Federico Marin Gutierrez
7. Address Playa de Ponce, 34 Matafiero Street,
Ponce, Puerto Rico
8. Age 48
9. Sex M
10. Civil Status Married
11. Usual Occupation of injured person
Carpenter Helper

12. How long has he been working for you? ⁴
three months
13. Was the injured person doing his usual work
when the accident occurred? Yes
14. For how long has he been working at his present
occupation? 5 years

C SALARY OR WAGE BASIS

If the injured person worked:

15. By the day: Indicate daily wages
16. By the hour 1.00 Indicate wage per hour
17. By the week Indicate weekly wage
18. By the month Indicate monthly salary
19. By contract Indicate daily earnings
(average)
20. As a sharecropper state: (a) Whether any con-
tract signed before a notary, judge or labor
agent.

(b) Daily wage computed according to the cus-
tomary wage on the farm or neighborhood:

D OCCUPATIONAL ACCIDENT OR DISEASE

21. Date of accident: 25 Day Month March 1958
22. Time accident occurred 3:45 P.M.
23. Time the injured commenced to work on day of
accident. 7:00 AM
24. Place, ward or town where the accident occurred
Jobsite, Tallaboa, Pennelas, P.R.
- Place Ward Town
25. What was the injured doing when the accident
happened Carrying a piece of lumber

(Be specific—if using tools or materials show
what he was doing with them) .

.....

.....

26. Did the injured stop work as a result of the occupation accident or disease? Yes
27. If the injured worker left his work, state the date on which he did so 26 March 1958
28. Describe in detail how the accident occurred. While he was carrying a piece of lumber slide and feel pains (sic) in the right inguinal region and right lumbar region.
- If occupational disease is alleged, report the claims of the injured worker.

.....
 (Give a good description of what happened and how it happened. State the objects or substances involved and state their relation to the accident).

29. What vehicle, machine, tool, object, or substances caused the occupational injury or disease. Piece of lumber
30. State the parts of the body injured. Right inguinal region & Right Lumbar Region

E WITNESSES:

31. Witnesses who saw accident according to employers investigation:

<i>Name</i>	<i>Address</i>
TOXIN GRACIA	BROWN & ROOT Caribe Inc.,

F OBSERVATIONS:

32. Make any observation you deem pertinent in connection with this alleged accident.

G SIGNATURE

33. I certify that this report is true and correct.
34. In Ponce P.R., this 26th of March of 1958
 town day month year
35. Signature of employer or authorized representative.

BROWN & ROOT CARIBE INC.

(signed) J. WALTER SMITH

Recross Examination

By Mr. Nachman:

XQ. But you don't know what findings he made from this? A. He confirms the 50 percent, then he should have the same findings that he had in 1951.

XQ. But you have no way of knowing what findings Dr. Gonzalez made? A. I couldn't really say it, but I know.

XQ. All you can say was that there was limitation of function? A. Yes.

XQ. Which is not greater than the 50 percent disability?

Mr. Ront: I think this is outside the scope. I would like to ask the Doctor if he would want to comment any further with any other medical report that he stated was in the record, as long as he has an opportunity to discuss what the report [186] of the record is.

Mr. Nachman: The other record is Dr. Sheplan's report, but it has no bearing on Dr. Rivera or Dr. Gonzalez's findings. I am only examining him on a document in evidence. If you want to submit Dr. Sheplan's report, go ahead.

Mr. Ront: I withdraw that.

RESPONDENT'S EXHIBIT NO. 1

COMMONWEALTH OF PUERTO RICO
 STATE INSURANCE FUND
 San Juan, Puerto Rico
 CLAIMS DIVISION

SWORN STATEMENT

Re: Case No. 5Y-17173

Injured: Federico Marin Gutierrez

Employer: Waterman Dock

Accident: illegible

On this 28th day of November, 1956, at 10:15 A.M. and at the place Claims Division SIF, in the Municipality of San Juan, P. R. appears before the investigator Mr. Ramon Torres Navarro, the deponent Mr. Federico Marin Gutierrez and after the admonitions of law voluntarily states as follows:

INVESTIGATOR:

Raise your right hand.

Do you solemnly swear to tell the truth, the whole truth and nothing but the truth?

DEPONENT:

Yes, sir.

Your name: Federico Marin Gutierrez

Your age: 48 years.

Married or single: Married

Tell me exactly where you live: No. 49 Matadero Street, Ponce, Playa, Ponce, P. R.

What is your job and where do you work? I work on the apron at the pier in Ponce for Waterman Dock.

What is your wage? We earn 1.53 per hour.

How many hours do you work each day? 8 hours straight time.

What was the name of the person in charge of the work? Mario Velázquez.

What did you come here for today? They sent me from Ponce to be examined.

What was it that happened to you? Just as I was about to receive the draft apparently the winch man from inside drew back on the sling load and carried me making me fall to the pavement and upon falling I could not get up because I felt a severe pain in my waist and part of the inguinal region.

At what time did this accident occur? At 10 o'clock in the morning.

What witnesses were there at that moment? Carmelo Fraticelli and Manuel Quirindongo Cintron.

What did they do with you when that accident occur? Well I stood it until 3:30 and went to the office to fill in the forms and later the minor surgeon sent me over to Dr. Pila's Clinic.

Before this accident, which you claim happened to you on the 21st of October 1956, had you had any accident at work? Yes sir. In 1951 when I was working for the Oliver Firm.

On what part of the body did you receive injury in that accident you say you had in 1951? On the waist and on my left leg which hurt me a lot.

Did you receive any compensation from the Fund for disability in connection with that 1951 accident?

Yes sir. I received a 50% disability which they awarded me.

Have you had any other accident after these you have mentioned? A. Yes before the accident for which they gave me 50% disability I had another accident and I only got per diems.

Do you have anything else to add to this statement?
Nothing else.

Do you know how to read and write? Yes sir.

I certify that I have read the above statement, that it is complete in all its parts, that is, that the questions and answers are correct.

(signed) FEDERICO MORALES (sic) GUTIERREZ

Deponent

I certify that the above statement was given to me this 28th day of November, 1956 by Federico Marin Gutierrez in San Juan, P. R.

(signed) RAMON TORRES NAVARRO

Investigator.

RESPONDENT'S EXHIBIT NO. 2

11/5/56

COMMONWEALTH OF PUERTO RICO

STATE INSURANCE FUND

San Juan 8, Puerto Rico

Employer: Fill in immediately upon occurrence of the accident and hand to injured worker.

Case No.

Policy No. 66

Key 7309 Group 300

Daily Wage 15.60

Weekly Comp. 20.00

Part of the Body

Nature of Lesion

READ INSTRUCTIONS ON THE BACK.

REPORT OF ACCIDENT AT WORK

A EMPLOYER

1. Name of Employer Waterman Dock Company
2. Postal Address San Juan, P. R.
3. Kind of business Shipping
4. Place of Business Playa Ponce, P. R.

5. Indicate the product or principal article harvested or manufactured or the service rendered by the business.

B INJURED WORKER

6. Name of injured worker Federico Marin
ssn 581-OT-5392
7. Address No. 34 Matadero Street,
Ponce Playa, P. R.

8. Age 49 years

9. Sex M

10. Civil Status Married

11. Usual Occupation of injured person

Longshoreman

12. How long has he been working for you? illegible

13. Was the injured person doing his usual work when the accident occurred? Yes

14. For how long has he been working at his present occupation?

C SALARY OR WAGE BASIS

If the injured person worked:

15. By the day: Indicate daily wage:

16. By the hour Indicate wage per hour

1.95 p.h.

17. By the week Indicate weekly wage

18. By the month Indicate monthly wage

19. By contract Indicate daily earnings
(average)

20. As a sharecropper state: (a) Whether any contract signed before a notary, judge or labor agent.

(b) Daily wage computed according to the customary wage on the farm or neighborhood:

D OCCUPATIONAL ACCIDENT OR DISEASE

21. Date of accident 21 Oct 1955

22. Time accident occurred 10:00 A.M.

23. Time the injured commenced to work on day of accident. - 7:00 AM

24. Place, ward or town where the accident occurred
#2 hold forward ashore SS Hastings

Place Ward Town

25. What was the injured doing when the accident happened - *(Be specific—if using tools or materials show what he was doing with them)*

26. Did the injured stop work as a result of the occupational accident or disease? No

27. If the injured worker left his work, state the date on which he did so.

28. Describe in detail how the accident occurred. When the worker held the draft which was swinging the worker slipped falling in a seated position feeling pain over the inguinal and lumbar region.

If occupational disease is alleged, report the claims of the injured worker.

(Give a good description of what happened and how it happened. State the objects or substances involved and state their relation to the accident).

29. What vehicle, machine, tool, object, or substance caused the occupational injury or disease. Fall

30. State the part of the body injured. Inguinal region — Lumbar Reg.

E WITNESSES:

31. Witnesses who saw accident according to employers investigation:

Name Address

Mannel Quirindongo Cintron

Las Parcelas — PLAYA PONCE

Carmelo Fraticelli Ruiz

Caracoles

F. OBSERVATIONS:

32. Make any observation you deem pertinent in connection with this alleged accident.

G. SIGNATURE

33. I certify that this report is true and correct.
 34. In Playa Ponce, P.R., this 21st day of October
 town day month
 of 1956
 year.

35. Signature of employer or authorized representative. (signature illegible)

H. REPORT OF STATE INSURANCE FUNDS

PHYSICIAN, MINOR SURGEON OR NURSE

36. Name of injured worker Federico Marin
 37. Occupation Longshoreman
 38. Age 49
 39. Right or left handed? Right
 40. Name of employer WATERMAN DOCK CO.
 41. Address Ponce
 42. Date of alleged accident 10/21/56
 43. Date first examination 10/22/56
 44. History of alleged accident or occupation disease as stated verbally by the worker.
 When trying to hold a draft, slipped falling seated on the pavement feeling pain in the hips, waist and inguinal region both sides.
 45. Result of X Ray examination if any was made Negative for fracture of lumbar vertebra
 46. Diagnosis on the date of first examination Alleged pain in lumbar region following alleged contusion. No ext. evid. of trauma in lumbar reg. Temp. 37 degrees. Has reg. spasms. Warm water bags. A. S. A.
 47. Prognosis Fav. An. Urine — ng.
 48. Treatment X Ray Flexin

49. Probable length of treatment 3 weeks
50. Does the injured worker's condition have or have not any relation with the verbal history which he gave of the alleged accident? Yes
51. State the diseases, anatomical deformities, or congenital or original incapacities prior to the accident Sear one third anterior half leg leg pterigion both eyes, in 1954, was hospitalized in Dr. Pila's Clinic and Prof. Building for the same condition.
- (a) Examination on sight. No
- (b) Complete general physical examination.
Yes
- (c) Was the described physical incapacity compensated by the Fund? No
52. Does he require hospitalization No
53. Clinic to which referred
54. Did you authorize injured worker to work? No
55. Date
56. Recommendations
57. Signed at Ponce, P.R., this 24 of October 1956
58. Signature Dr. S. SAEZ
- Title: Surgical Traumatic and Rehabilitation Center, Ponce

II REPORT OF STATE INSURANCE FUNDS PHYSICIAN, MINOR SURGEON OR NURSE

36. Name of injured worker

Federico Marín Gutierrez

37. Occupation Carpenter's helper

38. Age 48

39. Right or left handed? Right Handed

40. Name of employer Brown & Root CARIBE, INC.

41. Address Tallaboa, Pennelas

42. Date of alleged accident 3/25/58

43. Date first examination 3/26/58

44. History of alleged accident or occupation disease as stated verbally by the worker.

He claims that while carrying some boards he stepped into a hole on which loose soil had been spread and his foot slipped on taking a miss step and latter when placing the board he felt a sharp pain in right inguinal region and in lumbar region.

45. Result of X Ray examination if any was made

46. Diagnosis on the date of first examination.

On examination presents an inflamed right inguinal ganglion very painful on palpation. No external evidence of trauma in lumbar region nor history of trauma. Temp. 37 degrees. Negative urine analysis.

47. Prognosis

48. Treatment

49. Probable length of treatment

50. Does the injured worker's condition have or have not any relation with the verbal history which he gave of the alleged accident? No relation.

51. State the diseases, anatomical deformities, or congenital or original incapacities prior to the accident: Scarring erosion upper arm left lateral aspect scar, middle aspect left index finger, callouses in palm both hands, (rest illegible).

(a) Examination on sight. No

(b) Complete general physical examination.

Yes

(c) Was the described physical incapacity compensated by the Fund?

52. Does he require hospitalization No

53. Clinic to which referred

54. Did you authorized injured worker to work?

55. Date

56. Recommendations

57. Signed at Ponce, P.R. this 26th of March 1958.

58. Signature Dr. JOSE DEL PRADO

Title Surgical Traumatic & Rehabilitation
Center, Ponce

RESPONDENT'S EXHIBIT NO. 7

COMMONWEALTH OF PUERTO RICO

STATE INSURANCE FUND

San Juan 8, Puerto Rico

SPECIAL MEDICAL REPORT

Re: Case No.

Worker: Federico Marin Gutierrez

Employer: Brown & Root Caribe Inc.

Date of Accident: 3-25-58

I have examined this date and in this Central Dispensary at Ponce the above named worker who alleges that while he was carrying some boards he stepped upon a hole on

which loose soil had been placed and that he made a misstep and slipped, and that latter when he placed the board in its place, he felt a sharp pain in the inguinal region, right side and in the lumbar region.

An analysis of the urine was made and was negative.

Upon examination of the lumbar region there is no external evidence of trauma nor is there any history of trauma. He presents a right inguinal ganglion which is inflamed and very painful on palpation, a condition which bears no relation to his alleged accident. Temperature 37 degrees centigrade.

NO RELATION.

Previous condition: searing erosion on the upper third of the left arm lateral aspect, scar on the middle phalange dorsal aspect of the left index finger, callouses on both palms, small ulcer on the distal inter-phalangeal articulation of the right little finger, a scar on the third half of the anterior right leg, tattoo on right forearm, scars on the right half and lower anterior aspect of the left leg.

(signed) DR. JOSE DEL PRADO
Surgical Traumatic &
Rehabilitation Center
— Ponce

3-26-58

I agree: DR. GABRIEL ZAMBRANO
(signature illegible)

RESPONDENT'S EXHIBIT NO. 12

COMMONWEALTH OF PUERTO RICO

STATE INSURANCE FUND

San Juan, Puerto Rico

SPECIAL MEDICAL REPORT

Re: Case No. 5Y-17173

Worker: Federico Marin

Employer: Waterman Dock

Date of Accident: 10-21-56

The above named injured worker having been examined on this date he is found to be cured and without disability from his accident of 10-21-56. The limitations of functions are neither as much as nor more than 50% of the general physiological functions. This patient received a 50% disability of the general physiological function for the accident which occurred on 1-10-51 consisting in a severe lumbar sprain.

(signed) EDUARDO GONZALEZ, M.D.
Medical Inspector

RESPONDENT'S EXHIBIT NO. 15

COMMONWEALTH OF PUERTO RICO

STATE INSURANCE FUND

San Juan 8, Puerto Rico

SPECIAL MEDICAL REPORT

Re: Case No. 5-E-255500

Worker: Federico Marin Gutierrez

Employer: Jaime L. Oliver

Date of Accident: 1/10/51

The undersigned physicians have examined the above named worker on this date, in connection with the accident he had on 1-10-51 consisting in lumbar sprain.

Subsequently this worker developed a dislocation of an intervertebral disc, a condition which bothers him in the sense that it limits the movements of the torso and he reports pain when walking or standing up or whenever making any movement.

We estimate that the worker has remained with an incapacity equivalent to the loss of fifty per cent (50%) of the general physiological function. This is a permanent partial incapacity.

Prior to the accident he presented callouses on his hands.

He has been authorized to go to work on 6-21-51.

(signed) N. BAYONET, M.D.

Medical Director

Reviewed and confirmed by

(signed) R. PINERO FERNANDEZ, M.D.

Assistant Medical Director

6-20-51

RESPONDENT'S EXHIBIT NO. 16

WELFARE FUND PRSSA-UTM

Nieves Building, Stop 5

Puerta de Tierra, Puerto Rico

March 21, 1960

Name of the workman: Federico Marin Gutierrez

Social Security : 581-01-5392

REPORT OF HOURS WORKED

Year 1954

Did not work

Year 1955

January-February

Did not work

April-June

" " "

July-Sept.

" " "

Oct.-Dec.

16.75

16.75

Year 1956

January-March

5.25

April-June

125.75

July-Sept.

145.00

Oct.-Dec.

103.50

379.50

Year 1957

January-March

54.00

April-June

173.00

July-Sept.

168.75

Oct.-Dec.

300.00

695.75

Year 1958

January-March

119.00

April-June

162.00

July-Sept.

135.50

Oct.-Dec.

100.00

516.50

Year 1959

January-March	102.25	
April-June	101.25	
July-Sept.	33.50	237.00

I certify that this information is true and correct and that it was obtained from the reports sent to this office by the shipping companies.

(Sgd.) FERNANDO GERMAN
FERNANDO GERMAN
Sub-Administrator

(Sgd.) MYRNA CALDERON

By: MYRNA CALDERON

RESPONDENT'S EXHIBIT NO. 17

ESTADO LIBRE ASOCIADO DE PUERTO RICO

FONDO DEL SEGURO DEL ESTADO

San Juan 8, Puerto Rico

INFORME MEDICO ESPECIAL

Re: Case Num.: 5v-7591

Obrero: Federico Marin Gutierrez

Patrono: Alcoa Steamship Co.

Fecha Accidente: 7-31-59

October 9, 1959

On 31 July 1959 sprained his and developed pain in the low back with radiation into the posterior aspect of the right leg down to the ankle. Was treated at Clinica Pila without improvement. Lumbar myelogram was performed on 1 Sept. 1959 by Dr. Joseph Brinz and was reported as negative.

At present complains of pain in the low back with radi-

ation down the back of the right leg to the ankle. Also has pain in the back of the neck and down the left leg.

No complaints of numbness, weakness, bowel or bladder disturbance or incontinence.

Gives history that in 1951 received an injury to the low back with fracture of the spinal column for which he received 50% compensation.

Examination:

Normal gait. Straight lumbar curve. Some protrusion of the L3 and L4 spinous processes. No scoliosis. Mild lumbar paravertebral muscle spasm. Forward bending to 70° from vertical.

RSLR 70°, LSLR 75°. Lasague positive on right. Moderate low lumbar interspinous tenderness.

Reflexes—Normal at knee, somewhat sluggish at ankle.

Sensory—normal.

Motor—1 cm. atrophy of left calf. Very mild weakness of right foot plantar flexors.

Impression:

There is some subjective evidence of nerve root irritation on the right. The objective finding of mild atrophy of the left calf may be a residual of the previous spinal injury.

Recommend:

- 1) Obtain record and X-Rays of old accident.
- 2) Please have our radiologist review the myelogram X-Rays.
- 3) Refer to Back-Committee.

(s) JOSE A. ALVAREZ DE CHOUDENS, M.D.

JOSE A. ALVAREZ DE CHOUDENS, M.D.

22 Oct 1959

JAAC/mda

STENOGRAPHIC TRANSCRIPT OF TRIAL

FELIX A. ROMAN

a witness called by and on behalf of the libellant, was examined and testified as follows:

Direct Examination

[87] Q. Have you worked on other ships? A. Yes, sir.

Q. Carrying bagged cargo? A. Yes, sir.

Q. Do they have anybody on other ships to look after the bags? [88] A. Yes, they put the cooper to take care of the bags.

Q. What does he do? A. He sews the bags up.

Q. Now, from the time of this accident, until today, where have you lived? A. In the San Israel ward, Playa de Ponce.

Q. And have you left Puerto Rico during this time? A. No, sir.

Q. And as far as you know, were you listed on the pay records of the Waterman Dock Company, for the day of the accident? A. Yes, sir.

Q. And has anybody ever interviewed you on the part of the steamship company, as to how this accident occurred? A. No, sir.

[92] MANUEL QUIRINDONGO CINTRON

a witness called by and on behalf of the libellant, was examined and testified as follows:

Direct Examination

By Mr. Nachman:

Q. What is your name? [93] A. Manuel Quirindongo Cintrol.

Q. Where do you live? A. At the Parcelas, at Playa Ponce.

Q. What is your occupation? A. I work at the apron at the pira, at Ponce.

Q. Do you know Federico Marin Gutierrez? A. Yes, sir. I do.

Q. Did you see him sustain an accident? A. Yes.

Q. When did that accident occur, if you know? A. That was in October 1956.

Q. Do you remember the name of the ship you were working on that day? A. No, I don't.

Q. Did you see the accident happen? A. Yes.

Q. What happened? A. He was waiting to receive the draft, and when he reached to grab the draft, why he slipped and fell.

Q. Do you know what caused him to slip? A. The waste that falls from the draft, that is, the beans that fall out of broken bags.

Q. Where were you working at the time? A. Almost beside him.

Q. What hold were you working at? [94] A. No, 2 aft.

Q. What did you do when he fell? A. I went to lift him up.

Q. And did you lift him up? A. Yes, I did.

Q. Wasn't he able to lift up by himself? A. No, he couldn't.

Q. What did you do after you lifted him up? A. We carried him on our shoulders over to the corner, to see if he would get over it, but he didn't.

The Court: Let the record show that the statement of the former witness, Mr. Felix A. Roman, who is still in the court room has been delivered to counsel for respondent by counsel for libellant.

Q. After you picked him up, where did you move him to?

A. After I picked him up, we moved him to the corner. Then we took him over to the minor surgeon at the pier.

Q. How long did he stay in the corner? A. About a quarter of an hour.

Q. And who did his work for him? A. We who work at the holds there did his work for him, because we always help each other if anything happens.

Q. When you brought him to the "practicante" was it when the shift was all over? A. No.

[95] Q. What did you do after you brought him to the "practicante"? A. I came back to continue working.

Q. From October 1956 up to the present day, have you resided always in Las Parcelas de Ponce? A. I have lived there ever since January 1942.

Q. And during that time have you left Puerto Rico for any period? A. Never.

Q. Have you ever been approached by anybody from the respondent for a statement or for interview as to how this accident occurred? A. No.

Q. And as far as you know, does your name appear on the payroll records of the Waterman Dock Company? A. Well, it has to be there.

Mr. Nachman: Your witness.

[211] The Court: The motion to dismiss is denied. Of course, I will not give to the ruling of the Court the weight or the damaging effect that Mr. Nachman quite appropriately wants the Court to give to it, as practically deciding the case in favor of libellant. I will not go so far, and as this is a new question before this Court I will limit myself to denying the motion to dismiss.

Of course, I should advance to counsel, I believe that on the question of unseaworthiness and/or negligence, the libellant [212] has made a case, that as regards the question of laches the libellant has shown sufficient excuse for

the delay, and that the only two questions with which the Court is really concerned are the question of the actual physical damage suffered by libelant as a consequence of the October 21, 1956 accident. Whether his present physical state is totally the result of that accident, or whether the accident aggravated in some way his physical state resulting from the 1951 accident, or whether the 1959 accident aggravated and to what extent the previous physical condition of the libelant.

I believe that in order to decide that, it is indispensable that the parties get a transcript of the medical testimony in the case, particularly I want to read pretty carefully the testimony of the two main experts, Dr. Rifkinson and Dr. Ramirez de Arellano. Of course, I have no doubt that part of the present condition of the libelant is due to the 1956 accident, but to what extent, and that's the important thing, in order to determine the damages.

I believe as to the material aspect of the damages I want the parties to discuss that more or less what appears from the evidence as to actual earnings of this libelant, if there is any evidence as to it, because the evidence is very weak in that. That's all I need.

I believe it isn't necessary to file briefs or discuss the exceptive allegations, and I had the opinion that it [213] would have been factual and unnecessary to discuss those exceptive allegations. They are based precisely on what transpired at the trial. They stand or fall on the evidence offered here, so it is not necessary to make a separate discussion of that. Indeed, I believe that what I have said now disposes of the exceptive allegations.

WATERMAN DOCK CO., INC.

~~SAN JUAN P. R.~~

Date. 6/21/52

NAME _____

[illegible][illegible]

500-13789

39.

CANYERO, FERNANDEZ & CO., INC.

TIME D. ALLOCATION OF WORK

TIME D.	DISTRIBUTION OF WORK
Aug 97	2/800 88
Oct 97	2/800 28
Nov 97	1/800 4
Dec 97	1/800 20
Jan 98	3/800 4
	64

~~Ident # 9 Reef~~

ALBANY

CASE

CHRYSLER

U. S. District Court, D. C.

**RESPONDENT'S EXHIBIT NO. 10
WATERMAN DOCK COMPANY, INC.**

**P. O. Box 3628
San Juan, Puerto Rico**

October 25, 1956

PONCE LANDING REPORT

SS HASTING VOY. 269-EB

Vessel arrived Ponce at 3:18 A.M. Docked at 4:46 A.M. same day. Commenced discharging operations at 7: A.M. October 21, 1956. Sailed for Norfolk at 6: A.M. October 22, 1956.

TONNAGE:	PONCE
Seattle	350.5 Tons
Portland	219.1 "
Stockton	417.2 "
Encinal	419.4 "

WEATHER CONDITION OF LOADING PORTS

1. Seattle	Low Temp. 51	Humidity 90	Precip. Light rain & drizzle.
2. Portland	Low Temp. 50	Humidity 60	Precip. Drizzle (Occasional)
3. Stockton	Low Temp. 60	Humidity 65	Precip. Clear
4. Encinal	Low Temp. 56	Humidity 70	Precip. Drizzle (Occasional)

WEATHER CONDITIONS AT PONCE

The weather condition at Ponce during 7: A.M. until 3: P.M. was Clear. 3: P.M. to 5: P.M. was cloudy. Commenced raining at 5: P.M. and 5:30 P.M. October 21, 1956.

No sign of condensation showed in hatches. Cargo was discharged in apparent good condition except 14 Cartons Fab, 25 Cartons of Libby Cnd Good, 15 Ctns Del Monte Cnd Goods and 3 Cartons Hunts Cnd Goods, found wet in hatch #5 L/H, apparently this damaged was caused by rain in other port.

HATCH #1

U/T/D B 10537 P/Ponce

5 Bags Pinto Beans found torn at time of discharging. Will be short in weight.

Alice Lover/Ponce

1 Case Preserves found completely empty. apparently pilfered at other port.

DM 1411/Mayaguez

1 Case 12/303 Sliced Beets dropped from pallet when this hit the cottage of the ship from about 30 feet high. Carton completely wet and crushed containing 3 jars broken.

Libbys Ponce

5 Cases (QH0A) 24/2 1/2 B Pears and 1 case (0812 A) 48/211 Pear Nectar with all cans dented. Damaged due to a pallet fell from about 30 feet high when hit the cottage of the ship.

L/H KB 17903/Ponce

1 Bag Pink Beans fell from pallet of about 35 feet high to dock floor, completely broken and contents scattered.

KB 17690/Ponce

5 Bags Pink Beans found torn and short in weight at time of discharging.

0812 A/Ponce

1 Case 48/12 Pear Nectar found completely empty. pilfered.

0705/Ponce	1 Case 48/7 3/4 oz. Peach Nectar found completely empty. pilfered.
Comedores Escolares/Ponce	1 Case 24/2 1/2 Tomatoes found with 1 can short.
0705/Ponce	1 Case 48/7 3/4 Peach Nectar found with 6 tins pilfered.
Libby/Ponce	1 Case 48/12 Peach Nectar found with 5 tins short.
L. H S 8469/Ponce	1 Bag Pink Beans found torn and short in weight.
Libby/Ponce	1 Case 24/2 1/2 Peaches found with 9 tins pilfered.
Hunts/Ponce	1 Case 48/8 Peach Slices found with 6 tins short.
Del Monte/Ponce	1 Case 48/6 oz. Tom Paste found with 28 tins short.
HATCH #2	
Locker KB 17463/Ponce	4 Bags Pink Beans found torn and short in weight.
	11 Bags Pink Beans found torn and short in weight at time of discharging.
U/T/D C P Co.	1 Case No. 441 of 1 Gro. Cashmere Bouquet Soap found completely empty pilfered.
MR. 2837/1 Ponce	1 Case #1 Kitchen Valve found completely empty pilfered.

C P Co./Ponce

1 Case No. 441 of 1 Gro. Cashmere Bouquet Soap found broken with 62 pieces pilfered.

MR. 2837/1 Ponce

1 Case #2 Kitchen Valve found with 6 pieces pilfered.

COMI Ponce

1 Case 12 1/2 Pts Avosets found with flaps opened containing 1 jar pilfered.

DM 1204/Ponce

1 Case 24/211 Prune Jice found opened with 2 cans short.

C P Co.

2 Cases No. 441 of 1 Gro. Cashmere Bouquet found with 20 pieces pilfered.

1 Case No. 441 of 1 Gro. Cashmere Bouquet Soap. found with 86 pieces pilfered.

1 Case No. 413 Cashmere Bouquet Soap with 2 pieces pilfered at pier.

HATCH #3

Locker M.E.L./Ponce

4 Rolls Floor Covering Pabco found slightly dented.

M.A./Mayaguez

1 Roll Floor Covering found broken in one edge.

M.O.S./Ponce

2 Rolls Floor Covering Pabco found slightly dented on

B T Youco Ponce	4 Rolls Floor Covering Pabco found slightly dented on center.
U T/D DM 1251/Ponce	1 Case 24 211 Pineapple Juice found with 11 tins short.
5208/Ponce	1 Case 72 Tom Juice found with 19 tins short.
NFOJ Ponce	1 Case 12/46 oz. Peach Nectar found with 1 can pilfered.
5505 A/Ponce	1 Case 72/8 Tom Jice found with 1 tins short and 1 tin empty.
DM 1098/Ponce	1 Case 12/2 1/2 Fruit for Salad found with 2 cans pilfered.
DM 1200/Ponce	1 Case Stwd. Prunes found with 1 can pilferred.
L/T D Comedores Escollares/Ponce	2 Cases 24/2 1/2 Peaches found broken on side containing 11 cans pilfered.
L/T/D Comedotes Escollares/Ponce	1 Case dropped from stevedores hands. cont. 4 cans dented.
	1 Case 24/2 1/2 Pelled Tomatoes found with a hole on side containing 1 can dented and 1 can pilfered.

		Approx. 12 cases 24 2 1/2 found crushed and broken. Damage apparently due to bundles of plywood San Juan stowed besides cartons.
	RB 17690/Ponce	7 Bags Pink Beans found torn recoopered in same hatch.
L/H	Tresco 775A Ponce	2 Bdl's Plywood fell from pallet of about 30 feet hight to dock floor, containing 6 panels broken on edges.
HATCH #4		
L/H	Fiesta Ponce	1 Bag F White Beans torn with pressure of the canva sling, will be short in weight.
	Gallo San Juan	1 Bag Rice found completely torn, about 74# pounds short.
	S 600/Ponce	1 Bag S F White Beans found torn short in weight.
	R 18/San Juan	1 Bag Pink Beans found torn short in weight.
	Fiesta/Ponce	11 Bags S F White Beans found torn and short in weight, recoopered in hatch.
	Talon/Ponce	1 Bag Pinto Beans found torn about 50# pounds short.
	3333/Ponce	1 Bag Pinto Beans and 1 bag S F White Beans fell from

Fiesta/Ponce

pallet of about 30 feet high. Bags completely broken and contents mixed

7 Bags Pinto Beans fell from pallets in same hatch, torn and short in weight. recovered.

Ponce

5 Bags Beans. 4 bags White and 1 bag Pinto fell from canvas sling from 9 feet high to deck. Bags completely broken and contents scattered.

3 Bags S F White Beans fell to dock floor. completely broken.

About 78 Bags Beans partly wet on top by rain while covering the hatch. Rain fell October 21, around 5: P.M. and 5:30 P.M.

S 600/Ponce

4 Bags S F White Beans fell from pallet to dock floor. bags torn and short in weight.

Mombo 17461/Ponce

1 bag Pinto Beans torn and short in weight by rough handling.

All bags that fell from pallets in hatch and dock floor was recovered in paper bags.

HATCH #5

T/D	Suers. de Trujillo & Subina Inc./Ponce	1 Case No. 5 of 5 Track and Hanger Sets found broken with contents apparently in good condition.
	8167/Ponce	3 Cases 48/1# Salmon found broken with 12 tins pilfered.
L/H	C P Co./Ponce	6 Cases 24/G Fab and 8 cases 24/M Fat Detergent found completely wet and cartons and pkgs broken.
	DM 1114 Ponce	1 Case 24/B Sliced Peaches found with flaps opened containing 8 tins pilfered.
L/H	0806/Ponce	2 Cases 48/B Pear Nectar found with 26 tins short.
	7 W/Ponce	1 Case 24/211 Pineapple Juice found with carton opened containing 3 tins short.
		1 Case 24/211 Pineapple Juice found completely empty. pilfered.
	Villalba/Ponce	1 Case 48/15 oz. Oval Sardines found with 3 cans pilfered.
	0508 A/Ponce	2 Cases 48/211 Apricot Nectar found with 13 tins pilfered at Ponce.
	DM 1006 Ponce	1 Case 48/B Apricot Nectar with carton broken and tins

partly dented due to rough handling.

Hunts/Ponce

1 Case 72 8 - Tom Sauce found broken with 1 tin short.

El Pescador Ponce

1 Case 100 5 Sardines found with 3 tins pilfered.

Libbys, Del Monte
and Hunts

About 47 Cartons Cnd Goods found completely wet with its contents wet, slightly rusty and labels stained. Those cartons were stowed under cartons of Fab.

Libbys Ponce

1 Pallets of about 35 cartons of Cnd Goods fell from sling of about 35 feet high. 90% of cartons completely broken and tins dented.

This damages in hatch #4 and #5 were caused by the failure of crane operators to operate vapor crane properly.

NOTE: According to crane operators the trucks stowed on deck was an obstacle to the free flow of cargo from ship to deck. They had to lift the cargo higher and as far as watching cargo is concerned was limited because trucks did not allow them to have a clear view of the cargo when it was being unloaded to pier floor.

(s) M C

Prepared by: MILTON CARRILLO

[fol. 165] [File endorsement omitted]

MINUTE ENTRY OF ARGUMENT—February 7, 1962

On February 7, 1962, this cause came on to be heard and was fully heard by the Court, Honorable Calvert Magruder, Senior Circuit Judge (by assignment), Honorable Bailey Aldrich, Circuit Judge, and Honorable William F. Smith, Circuit Judge (by assignment), sitting.

[fol. 167]

IN UNITED STATES COURT OF APPEALS,

FOR THE FIRST CIRCUIT

No. 5887

WATERMAN STEAMSHIP CORP., Respondent-Appellant,

FEDERICO MARIN GUTIERREZ, Libelant-Appellee.

[193 F. Supp. 894]

Appeal From the United States District Court for the District of Puerto Rico.

Before Magruder,* Aldrich and Smith, Circuit Judges.

Antonio M. Bird, with whom Harfzell, Fernandez & Novas was on brief, for appellant.

Harvey B. Nachman, with whom Nachman & Feldstein was on brief, for appellee.

* Sitting by assignment.

OPINION OF THE COURT—April 11, 1962

ALDRICH, Circuit Judge. This is a libel by a longshoreman for personal injuries sustained on a dock at which respondent's vessel was unloading, allegedly by reason of "improper storage of cargo on said dock." In addition, there were general allegations of unseaworthiness of the vessel and of negligence of its master, officers and crew. The district court made findings in libelant's favor as to [fol. 168] unseaworthiness and negligence and assessed damages. It rejected a defense of laches. Respondent appeals.

The accident occurred on October 21, 1956. Libelant was in the employ of a stevedore unloading respondent's vessel pursuant to contract. The first notice respondent received of the claim and, for all that appears, of the injury¹ was when suit was brought on January 9, 1959. By this date more than twice the period of the analogous statute of limitations had elapsed. The court found, "While working on the dock libelant slipped on [some] beans, twisted his torso and fell upon his buttocks. The injuries sustained by libelant were proximately caused by this unseaworthiness² of the vessel, the failure to furnish libelant with a safe place to work and by the negligence of the respondent." With respect to laches the court found that libelant had shown a sufficient excuse by the fact that he consulted counsel within the statutory period, and concluded that respondent was not prejudiced by the delay because the witnesses remained available and respondent had its own "records" indicating the cargo damage."

The first question is the responsibility for the beans. The court found that many of the bean bags were defective; that coopers were employed in sewing them up; that nonetheless beans were spilled from the drafts as they were

¹ Even libelant's employer had no prior notice of the basis of the present claim. Libelant told the State Insurance Fund not that he slipped, as now alleged, but that he fell because he was carried by the sling due to improper action of the winchman.

² What was meant by "this unseaworthiness" will be later discussed.

being swung ashore. "On one occasion, according to the records produced by respondent and admitted into evidence, a bag broke open in mid-air spilling its contents all over the dock. This event occurred while a draft from Hold No. 1 was in mid-air and still attached to the vessel. Hold No. 1 is immediately adjacent to No. 2 forward. Beans scattered [fol. 169] about the surface of the pier caused a dangerous condition for the longshoreman. The cargo being discharged was defective and unseaworthy. The ship owner was negligent in permitting the broken and weakened bags to be discharged, when it knew or should have known that injury was likely to result to persons in the service of the ship who had to work on and about the spilled beans. The condition on the pier was caused by the respondent's unseaworthy cargo and its lack of care. In permitting this condition to remain existent, the respondent failed to furnish libellant with a safe place to work."

The quoted portion of the court's opinion contains several errors. In the first place, the respondent's records do not show that the bag broke open in mid-air, but show that it fell from mid-air, and broke when it hit the deck.³ Secondly, the bag fell, and beans were spilled, whether from there or anywhere else, by no conduct in which respondent was shown to have participated. *Cf. Robillard v. A. L. Burbank & Co.*, D.C.S.D.N.Y., 1960, 186 F. Supp. 193, 197. And it is undisputed, with respect to "permitting this condition to remain existent" on the pier, that respondent had neither control of nor even a right to control that locus. The court's findings as to respondent's negligence cannot stand.

There remains the finding of unseaworthiness of the cargo. One speaks of unseaworthy cargo really in terms of result: rather, it is the unsafe condition, created by the cargo, which is felt to be a violation of some absolute duty of the shipowner. We recognize, of course, that a shipowner's duty is not to be evaded by calling a man a long-

³ If there could be said to be any ambiguity in the record (which we doubt) it is clearly resolved by reading the entries as to similar occurrences at other hatches.

shoreman and placing him in someone else's employ. *Seas Shipping Co. v. Sicracki*, 1946, 328 U.S. 85. But while labels [fol. 170] cannot avoid liability, they should not be used to create it. This is not a case of a defective piece of ship's equipment, or of a dangerous condition aboard the ship. Nor is it a case of a claimant whose work carries him both on and off the vessel. At best, lading, which was not part of the ship, which did not make the ship unsafe, and which had left the ship, is being used to impose absolute liability upon the shipowner for a condition caused by the lading to a shore worker. Some may feel this gangway has been crossed. See, e.g., *Hagans v. Ellerman & Bucknall S.S. Co.*, D.C.E.D.Pa., 1961, 196 F. Supp. 593; *Fitzmaurice v. Calmar S.S. Corp.*, D.C.E.D.Pa., 1961, 198 F. Supp. 304. But it seems to us that to extend such protection disregards the whole origin and purpose of the doctrine of unseaworthiness.⁴ True, such a worker may be broadly argued to be in the service of the ship. But not even in a technical sense was he on or about to go "on a voyage." *Pope & Talbot, Inc. v. Hawk*, 1953, 346 U.S. 406, 413. His dangers were not the same. *Ibid.* We see no difference to a land employee in source, cause, risk, or effect between beans spilled on a dock, or on a trucking platform, or on a warehouse floor in Denver. The very fact that unseaworthiness obligations are "awesome," *Kent v. Shell Oil Co.*, 5 Cir., 1961, 286 F.2d 746, 752, suggests that they should not be handled with prodigality. We are unwilling to recognize one here.

A recent case somewhat close on the facts is *Partenweerde v. Weigel*, 9 Cir., February 1962, F.2d . There libellant was a dock worker engaged in driving a tractor [fol. 171] handling lumber on the dock which was about to

⁴ Singularly enough, the doctrine of absolute tort liability for injuries ashore, to the extent that there have been cases, seems to exist solely for the benefit of longshoremen. Whether those decisions represent the independent views of the courts concerned, or are merely thought to be required by those of the Supreme Court, may be problematical. Cf. *Robillard v. A. L. Burbank & Co.*, *supra*. But we know that on at least one occasion we ourselves have erroneously exaggerated those views. *New York, N.H. & H. R.R. v. Henagan*, 1 Cir., 1959, 272 F.2d 153, *rev'd*, 1960, 364 U.S. 441.

he loaded onto respondent's vessel. He was struck by a defective ship's boom. The court found that libelant was not performing traditional ship's work within the scope of the obligation of seaworthiness. While the court noted a distinction between cargo not yet connected with the ship's loading gear and cargo actually being loaded, it is in common with us in recognizing limits in this area to principles of absolute liability. In a way the facts were more favorable to libelant than in the case at bar because it was the ship's gear that was defective and not merely cargo previously aboard.

There is a more specific difficulty. The court overruled the defense of laches because it found that libelant had a valid excuse for the delay and because respondent was not prejudiced. The only suggested excuse was that libelant consulted counsel within the statutory period. This has never been regarded as extenuation. *Wilson v. Northwest Marine Iron Works*, 9 Cir., 1954, 212 F.2d 510; *Marshall v. International Mercantile Marine Co.*, 2 Cir., 1930, 39 F.2d 551; *McGrath v. Panama R.R.*, 5 Cir., 1924, 298 Fed. 303. Assuming that absence of excuse is not fatal if there has been no actual prejudice, but cf. *Taylor v. Crain*, 3 Cir., 1952, 195 F.2d 163, we think that such lack of prejudice has been shown only in part. The court's first basis, that the witnesses were still available, was not equivalent to an opportunity to examine them at an earlier date. Cf. *Redman v. United Fruit Co.*, 2 Cir., 1949, 176 F.2d 513, *s.c.*, 2 Cir., 1950, 185 F.2d 553. It was demonstrated that the memories of these witnesses had become impaired. While they testified to loose beans falling from the drafts, they also testified similarly as to rice and feed. Yet defendant's records, of which the court quite properly made a point in another connection, showed that no rice or feed was discharged until after the accident. And while the records did in fact [fol. 172] show spilling from the drafts, they showed none near the hatch opposite which libelant was working. The testimony, as to the defective-bag source of the beans on which libelant was found to have slipped is highly questionable. We think as to this portion of the claim it was error to find that respondent was not prejudiced by the delay.

There is a similar weakness with respect to the evidentiary proof. Libelant cannot recover for beans that spilled from the drafts without some affirmative showing that they were the ones upon which he slipped. With an admitted substantial source of a large quantity of beans—the dropped bag—it seems to us that any finding that libelant fell, instead, on beans which spilled from defective bags on the drafts would be entirely speculative.² For either of these reasons we could not recognize a finding that libelant's fall was so caused.

On the other hand, as to the dropped bag, we quite agree that since respondent's own records showed it, respondent was not prejudiced. This, however, does not help libelant. Even if it could be found that libelant slipped on beans from that source, there was no evidence that this bag was defective, or that any defect caused it to drop. For all that appears there may have been improper operation by the winchman. His negligence, as already stated, was not the responsibility of the respondent. Accordingly, there is no basis for supporting a finding for libelant on any theory. Respondent's motion for judgment should have been allowed.

Judgment will be entered vacating the decree of the District Court, and remanding the case to that Court with direction to dismiss the libel.

[fol. 173]

IN UNITED STATES COURT OF APPEALS

JUDGMENT—April 11, 1962

This cause came on to be heard on appeal from the United States District Court for the District of Puerto Rico, and was argued by counsel.

Upon consideration whereof, It is now here ordered, adjudged and decreed as follows: The decree of the District

² Strictly, it must be observed that the court's attributing libelant's fall to beans from defective bags appears to be based primarily on its mistaken finding that a bag broke in mid-air.

Court is vacated, and the case is remanded to that Court with direction to dismiss the libel.

By the Court: Roger A. Stinchfield.

Approved: Peter Woodbury, Ch. J.

[fol. 174] Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. 175]

SUPREME COURT OF THE UNITED STATES

No. 229—October Term, 1962

FEDERICO MARIN GUTIERREZ, Petitioner,

vs.

WATERMAN STEAMSHIP CORP.

ORDER ALLOWING CERTIORARI—October 8, 1962

The petition herein for a writ of certiorari to the United States Court of Appeals for the First Circuit is granted, and the case is transferred to the summary calendar.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Mr. Justice Goldberg took no part in the consideration or decision of this petition.